

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-12-691-2
VS. . HOUSTON, TEXAS
DAVID MORSE BARRY . APRIL 21, 2014
9:00 A.M. to 5:00 P.M.

DAY 1 of 5
TRANSCRIPT of BENCH TRIAL
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

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District Court, Southern District of Texas.

Proceedings recorded by mechanical stenography, transcript
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APPEARANCES CONTINUED

ALSO PRESENT:

MR. JEFFERY G. CHAPPELL

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P R O C E E D I N G S

(Open Court, Defendant present.)

THE COURT: Good morning. Please be seated, after you state your appearances.

MS. ZACK: Sherri Zack and Bob Stabe on behalf of the United States, Your Honor.

THE COURT: And who is with you at counsel table?

MS. ZACK: Lolita Pouncy, a paralegal in our office, and Special Agent Jeffery Chappell from HSI, Your Honor.

THE COURT: All right. Thank you.

MR. JARVIS: Good morning, Judge. Bob Jarvis and Kim Minick for the defense, David Barry.

THE COURT: All right. Thank you.

We have a number of documents. Are there any issues relating to those that we can take up at this time?

MS. ZACK: Your Honor, we have provided the Court with a copy of the exhibit notebook. We have provided the same copy to the defense. And we have also provided the most updated version of the exhibit list to everybody. There are -- the only additions to that list, Your Honor, are the things from the stipulation that occurred last week, and that would be 28a and b, which are the interviews of XXXXXXXX Barry from 6-7-13 and 6-14-13.

THE COURT: 28a and b?

MS. ZACK: Yes, Your Honor, the CDs.

1 *THE COURT:* Yes. All right.

2 *MS. ZACK:* Yeah, these are DVDs of the interviews.
3 They were part of the trial stipulations that the Defendant
4 signed off on last week.

5 *THE COURT:* How are the numbers on the current exhibit
6 list? Are they the -- are the numbers that were on the -- of
7 the exhibits that were previously listed carried over so there
8 are no changes?

9 *MS. ZACK:* That's my understanding, yes, Your Honor.

10 *THE COURT:* All right. Good.

11 Any objection to admitting 28a and b?

12 *MR. JARVIS:* Judge, we don't have a copy of the
13 newest --

14 *MS. ZACK:* It's inside your notebook.

15 *MR. JARVIS:* Oh, okay.

16 *MS. MINICK:* Are you removing --

17 *MR. JARVIS:* So, just for clarification, so the only
18 change is 28, you changed that to a forensic video?

19 *MS. ZACK:* We added that.

20 *MS. MINICK:* Well, your previous one had 28 and 29,
21 which were the birth certificates.

22 *MS. ZACK:* Right. We took those off, since the
23 stipulation as to -- the first stipulation gives both their
24 dates of birth.

25 *THE COURT:* So, 27 is now -- that's the adoption

1 certificate. I assume that --

2 *MS. ZACK:* Correct, that's still the same.

3 *THE COURT:* All right.

4 *MR. JARVIS:* They changed the birth certificate to the
5 interview. Okay.

6 *MS. ZACK:* Right.

7 *MR. JARVIS:* So you --

8 *MS. ZACK:* Correct.

9 *THE COURT:* All right. So, 28 and 29 are withdrawn.
10 28a and 28b, are those to be admitted without objection?

11 *MR. JARVIS:* No, ma'am. We had a previous objection
12 about those, you have already ruled on. Subject to our
13 previous objection, yes, ma'am.

14 *THE COURT:* No, these are the interviews. I thought
15 that the stipulation covered these. What am I
16 misunderstanding?

17 *MR. JARVIS:* No, we stipulated that if he was to be
18 called, that's what he would say.

19 *THE COURT:* All right.

20 *MR. JARVIS:* But we still had our objection that you
21 earlier overruled, and we just want to make sure that --

22 *THE COURT:* Okay.

23 *MR. JARVIS:* -- we're not giving up --

24 *THE COURT:* So they're admitted subject to your
25 objection.

1 MR. JARVIS: Yes.

2 THE COURT: All right. That's fine. Your objection
3 is noted, but these are admitted.

4 MR. JARVIS: Yes, ma'am.

5 MS. ZACK: And that was based on the 414, 404
6 conversation and objections that we went back and forth. The
7 things that Your Honor had conditionally admitted was 4aa
8 through gg and everything in Exhibit 7.

9 THE COURT: Yes.

10 MS. ZACK: And 17n through t. Those were all
11 conditionally admitted and Your Honor had asked for
12 supplemental briefing on that, which the Government provided,
13 and so as a matter of housekeeping at this time, Your Honor,
14 are those going to be --

15 THE COURT: Do you have copies of the briefs?

16 MS. ZACK: I have a copy, yes, Your Honor.

17 THE COURT: That would be helpful.

18 *(Judge conferring with law clerk.)*

19 MS. ZACK: No, I have it. It's here.

20 THE COURT: I'll get them, never mind. We'll take up
21 the issue when you get to it in the trial.

22 MS. ZACK: Okay. Here it is, Your Honor, both of
23 them.

24 THE COURT: All right. Thank you.

25 MS. ZACK: That's the first one. Here they both are.

1 *THE COURT:* Thank you.

2 *MS. ZACK:* So this was the first one that we filed,
3 and then this is the United States' additional notice of
4 intention to use.

5 *THE COURT:* Thank you.

6 *MS. ZACK:* Focusing specifically on the case law that
7 was discussed in the courtroom that day.

8 *THE COURT:* Good.

9 *MS. ZACK:* The only other housekeeping like matter,
10 Your Honor, is as to the admission of 28a and b, I don't know
11 that -- being that there will be no cross of anybody, that
12 that's a DVD, I don't know at some point, wherever we get to
13 the trial where I want that to come in, is Your Honor just
14 going to view them privately or how are we going to --

15 *THE COURT:* We'll probably view them in the courtroom,
16 so I can hear any concerns that --

17 *MS. ZACK:* Okay.

18 *THE COURT:* -- either side may want to express about
19 them.

20 *MS. ZACK:* Okay. Thank you. And I think that that's
21 it for now. We have the computer and the screen set up, Your
22 Honor. Every exhibit that we plan on showing on the screen is
23 in Your Honor's notebook. The reason we've put it on disk is
24 it's hard sometimes to flip back and forth in the notebook --

25 *THE COURT:* That's fine.

1 *MS. ZACK:* -- and I think it will just make for a
2 fluid presentation. But if there's ever any question of what
3 Your Honor is looking at, if the screen isn't clear or
4 whatever, you do have a printed paper copy in front of you.

5 *THE COURT:* All right. Thank you.

6 *MS. ZACK:* And I don't believe there's -- other than,
7 you know, we've already admitted the stipulated items, I don't
8 think there's anything else at this time from the United
9 States.

10 *THE COURT:* All right. Very good.

11 Anything on behalf of the Defendant?

12 *MR. JARVIS:* No, ma'am.

13 *THE COURT:* All right. You have a more up-to-date
14 exhibit list as well, it looks like?

15 *MR. JARVIS:* Yes, ma'am.

16 *THE COURT:* Do you want to tend to any of these
17 matters now? How is it different?

18 *MR. JARVIS:* All we did was change the description of
19 some of the pictures of David Barry and his family.

20 *THE COURT:* All right.

21 *MR. JARVIS:* And those have been provided to the
22 Government.

23 *THE COURT:* Very good.

24 *MR. JARVIS:* So there's really no big difference.

25 *THE COURT:* Very good. All right. I think we are

1 ready then. Do the parties want to make an opening?

2 *MS. ZACK:* Yes, Your Honor.

3 *THE COURT:* Go ahead then.

4 *MS. ZACK:* Your Honor, this situation -- this case
5 started based on HSI Dallas sending a lead to Houston, to
6 Special Agent Chappell who was assigned the task of
7 investigating an individual that became known to him as Craig
8 Noonan, William Craig Noonan. And in the course of executing a
9 search warrant at that home, he had been provided, Special
10 Agent Chappell, that is, with a picture of who they believed to
11 be Mr. Noonan and two children.

12 At the same time -- that was on February 8th of
13 2011. And at the same time, the day before, on February 7th of
14 2011, HSI Dallas executed a warrant at the home of Mr. Barry.
15 Computers were taken. Cameras were taken. Interviews were
16 had. And what was found was that there were images of the two
17 children who ultimately were identified as R.B. and O.B. with
18 Mr. Noonan in lewd and lascivious displays. There were images
19 that contained Mr. Barry and Mr. Noonan naked with these
20 children, these children naked with Mr. Noonan, the children
21 naked themselves, both together and individually, and there
22 were other images that were found on Mr. Barry's computer of
23 unknown -- of an unknown child and an unknown adult.

24 While all of this is happening and things are
25 being forensically analyzed, the children are interviewed.

1 They're removed from the home. At some point they are
2 returned. Mr. Barry is then arrested on federal charges based
3 out of Houston, based on bringing these children -- and you
4 will learn that these children came with Mr. Barry several
5 times to the Houston area, twice starting in late May, early
6 June of 2010, and then in December, slash, January of 2010 --
7 2011.

8 They traveled here with Mr. Barry, who is their
9 adopted father, and they stayed in Mr. Noonan's home, as the
10 pictures will demonstrate. That they were naked a great deal
11 of the time, that they visited with other individuals who
12 got -- also got naked with the children, and that Mr. Barry was
13 fully aware what these pictures were being taken.

14 And we know that for several reasons. We know
15 that because the pictures were on Mr. Barry's computer. We
16 know that there were Instant Messenger chats where Mr. Barry
17 sends a naked picture that included his son O.B. prior to his
18 son's circumcision. We know that there are pictures found on
19 Mr. Barry's camera that were similar in nature to those found
20 on Mr. Noonan's camera, not the exact same pictures, but of a
21 similar kind, lewd and lascivious exhibition of the genitals.
22 There are pictures that Your Honor will see with Mr. Noonan's
23 head in the pelvic, genital region of one of the Barry
24 children. There are pictures of the Barry children with
25 their heads in Mr. Noonan's genital region. There are pictures

1 where the children are precariously close to Mr. Noonan's
2 exposed genitals.

3 There are bathroom pictures. One in particular
4 where one of the Barry children is in the tub where his feet
5 are in such a position that he has raised his pelvis to expose
6 his genitals, which are the focus of the picture.

7 All of this was done, the United States believes
8 we can prove, with the knowledge of Mr. Barry and obviously in
9 accord with the actions of Mr. Noonan. We believe that the
10 Defendant brought these children here for that purpose. We can
11 demonstrate through the chats that Mr. Barry is fully aware of
12 what child pornography is. That he knows it's illegal to send
13 and that he sent it to others, saying it was only for them to
14 look at.

15 The nexus, Your Honor, to the interstate commerce
16 will be demonstrated in the fact that the items that were used
17 to produce these pictures, the cameras, the computers that they
18 were sent on, the things that stored them were all manufactured
19 outside of the Southern District of Texas and outside the State
20 of Texas and, in fact, outside of the United States.

21 And we believe after viewing all of the evidence
22 and applying the law to the facts in this case, that Your Honor
23 will find that in both Counts 1 and 2 the Defendant conspired
24 with Mr. Noonan to produce this child pornography and in Counts
25 6 and 7, that the Defendant did, in fact, produce this child

1 pornography as the parent or guardian of R.B. and O.B.

2 Thank you, Your Honor.

3 *THE COURT:* Thank you.

4 On behalf of the defense?

5 *MR. JARVIS:* Yes, ma'am. Thank you. I think what the
6 Judge -- the Court is going to find is after you hear all of
7 the testimony, you're going to believe that David Barry is
8 probably one of the most naive, trusting souls you've ever met,
9 and that he was duped into believing that Craig Noonan was his
10 friend and somebody who was going to help him and somebody who
11 was going to help him take care of the boys.

12 When he and his Partner Mark Peterson -- they had
13 been together at this time probably about 18 years. They
14 decided to foster kids, and they went through all of the
15 training. They decided to adopt these two boys that CPS
16 brought to them. They were, I think, 1 and not quite 2 years
17 old yet. And you'll hear evidence that how David Barry took
18 those boys in and taught them how to speak, taught them how to
19 walk. Did everything a great parent would want to do to help
20 these developmentally delayed children.

21 And you'll hear them going to school, taking care
22 of them, soccer practice, the whole 9 yards. He became
23 concerned, though, of the problems that he believed they were
24 going to face in life, the sons of gay parents, adopted,
25 Hispanic, and developmentally delayed. He began researching,

1 and he found a study that said if they become nudists that
2 might help them with their self-esteem later on in life.

3 So after the adoption, a couple years later, he
4 decides that he's going to try nudism inside his own home. And
5 you will hear testimony about how it started out with just
6 hanging around and then working out on the Wii workout stuff.
7 And every once in a while the boys would work out with him
8 naked, too. And eventually it became more of a lifestyle for
9 them inside their own home.

10 He then -- because Mr. Peterson and he were --
11 started to be estranged. And Mr. Peterson's mom was sick and
12 in the hospital in Fort Worth and he was working all the time.
13 So, Mr. Barry was basically home alone with the boys or when
14 they were not in school.

15 He decided to go on truenudist.com, which is a
16 Web site for nudists. He met a person by the name of Craig
17 Noonan out of Houston. They began chatting and talking and
18 interacting for six or eight months before Mr. Barry decided
19 and Mr. Noonan invited him down to Houston. So he brings the
20 boys in June of 2010 twice and then once more during -- after
21 Christmas and right around New Year's Eve down to Houston.

22 Now, Mr. Noonan is also a practicing nudist. So
23 they came down and everybody took off their clothes and they
24 just hung around naked inside that home. You'll hear testimony
25 and you'll see these pictures and they're going to be Saturday

1 morning pictures laying around the bed with the dog and toys.
2 And you'll see these pictures and you'll be able to tell
3 that -- excuse me -- R.B. took a lot of these pictures, if not
4 the vast majority of them.

5 The ones we want you to concentrate on, Judge, is
6 there are three basic separate groups of these pictures.
7 There's the horsing around pictures, where there's R.B. and
8 O.B. and Mr. Noonan on or in, around the bedroom. Then there's
9 another smaller group pictures where there's Mr. Barry and
10 Mr. Noonan and the boys all in more of a portrait-type snapshot
11 sitting there naked. And then there's a third group of
12 pictures of one or two of the boys in a bathtub with bubble
13 bath.

14 So there's three different groups of pictures.
15 And that's important because you'll hear testimony that R.B.
16 took the majority, if not all, or, well, it was taken with a
17 timer, all of those Saturday morning horsing around pictures.
18 With four of them in the picture, there had to be a timer, and
19 the timer took those pictures, the portraits. And then it's
20 unknown who took the pictures of the boys in the bathtub. But
21 we know there's going to be at least a timer on the camera, so
22 that the boys could have taken the pictures.

23 One time Mr. Noonan invited Mr. Barry to come to
24 Euless, to visit with another nudist man who has a son, Tim
25 Whittington, and you'll hear his name. He's the one that was

1 the beginning of all this deal. And you'll hear that when
2 Mr. Barry and the boys showed up, Noonan was already there or
3 they met there and they all became naked and the boys began
4 wrestling and horse playing again. And that's when Tim
5 Whittington took pictures without the knowledge of Mr. Barry.
6 He didn't know these pictures were taken. And you'll see a
7 couple of those pictures inside the evidence.

8 But when you look at these pictures, you're going
9 to see that they're just vacation pictures of nudists. They're
10 not child pornography. There's no erect penises. There's no
11 sexual poses. There's no coyness or looking at the camera or
12 asking and looking like they want to have some type of sex.
13 And there was never any intent to create child pornography.
14 And there's no evidence that Mr. Barry even knew that those
15 pictures were taken by R.B., except for the portrait pictures
16 where they all were in there together.

17 We're not sure -- at least I'm not sure how those
18 pictures got on Mr. Barry's computer, because they weren't
19 taken by him. There's no evidence they were. But they were
20 just pictures of a nudist family at another naked guy's house,
21 which is disgusting, but it's not illegal. There's no child
22 pornography.

23 So when the Federal Government executed the
24 search warrant in February 2011, they took the boys. They put
25 them in foster care 17 months. They had counseling every week

1 by a lady by the name of Julie Porter. At no time during those
2 17 months did they ever make an outcry about being sexually
3 abused by anybody, Mr. Noonan, Mr. Barry, Mr. Peterson, anybody
4 at all. They asked them about the cameras. They hardly
5 remembered anybody taking any pictures, because it wasn't that
6 big deal for the boys.

7 We had a termination jury trial in Wichita Falls
8 in July of 2012, eight days of testimony. They returned the
9 boys.

10 *MS. ZACK:* Objection, Your Honor, relevance.

11 *THE COURT:* It's a bench trial. I'm going to allow
12 it.

13 *MR. JARVIS:* The boys were returned without any
14 supervision or restrictions. And then lo and behold, two
15 months later, Tarrant County decides to indict him for sexual
16 performance of a child. That's about 19 months after they took
17 the computer and the boys were taken.

18 The boys were then taken away from Mr. Barry and
19 Mr. Peterson again for about 90 days. Then he gets the boys
20 back, because that's the State statute, after 90 days, you can
21 have your child back if a family law court has made that
22 decision. Lo and behold about four months later, he gets
23 indicted by the feds in the Southern District, all for the same
24 pictures that were presented to the jury in Wichita Falls.

25 You'll see with these chats, they're not nice

1 chats. They're not good chats. But if you look at them
2 carefully, as far as the elements of the offense, there's not a
3 chat between Craig Noonan and David Barry saying, "I enjoyed
4 taking pictures of your boys and it really turned me on to have
5 them." There's nothing in there between Mr. Noonan and
6 Mr. Barry about creating, producing, conspiring to create child
7 pornography. And that's what he's charged with. There's
8 nothing in those chats.

9 Mr. Barry's just a -- or was, he's no longer, a
10 gay nudist. And, frankly, I think that's why we're here today.

11 *MS. ZACK:* Objection, Your Honor.

12 *THE COURT:* I'm going to sustain that objection.

13 *MR. JARVIS:* Yes, ma'am. But when you look at these
14 pictures, you'll see it's just nakedness, which isn't illegal.
15 Thank you.

16 *THE COURT:* Thank you.

17 All right. Do you want to call your first
18 witness, please?

19 *MS. ZACK:* Yes, Your Honor. At this time the United
20 States would call Special Agent Jeffery Chappell.

21 *THE COURT:* Mr. Chappell.

22 *(Jeffery G. Chappell, Government's witness, sworn.)*

23 *THE COURT:* All right. Thank you. Please be seated,
24 sir.

25 You may proceed.

Chappell - Direct by Ms. Zack

1 MS. ZACK: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 BY MS. ZACK:

4 Q. Could you please state your full name?

5 A. Jeffery Glen Chappell.

6 Q. And how are you employed, sir?

7 A. As a special agent with Homeland Security Investigations.

8 Q. And how long have you been so employed?

9 A. Since November of 2000 -- I'm sorry, since January of 2004,
10 10 years.

11 Q. And prior to that, did you have any law enforcement
12 experience?

13 A. Yes, ma'am. Almost seven years with the U.S. Border Patrol
14 and prior to that almost seven years as a municipal police
15 officer in the city of McAllen, Texas.

16 Q. And when you became a special agent with HSI, did you take
17 on any special responsibilities or get any special training?

18 A. Yes, ma'am. In November of 2004 I was assigned to the
19 cyber investigations group, which handles -- or investigates
20 child exploitation via the Internet and the use of computers.
21 I received training in that field. And then in 2009 I received
22 training for -- specifically related to computer forensics.

23 Q. And what type of training was that in 2009?

24 A. In 2009 I received the basic certification through the
25 Treasury Computer Forensics Program, as well as A plus

Chappell - Direct by Ms. Zack

1 certification through TIA.

2 Q. And have you trained specifically in any computer forensic
3 tools that you use to analyze computers and computer media?

4 A. Yes.

5 Q. And what are those?

6 A. I received my AccessData certified examiner certification,
7 which is certification to use the AccessData toolkit, FTK as
8 it's typically called, as well as the EnCE, which is the EnCase
9 certified examiner through Guidance Software, to use their
10 suite of tools as well.

11 Q. And do you update that as the companies update that
12 software?

13 A. Yes. It's every two years for each.

14 Q. Okay. And have you been continuously certified since your
15 first acquiring that type of training?

16 A. Yes, ma'am.

17 Q. Now, those tools don't -- do they only relate to child
18 pornography examinations?

19 A. No, ma'am.

20 Q. Okay. Did you get training as far as Internet crimes
21 against children? Have you attended conferences on that
22 subject and taken classes specifically targeting individuals
23 who have a sexual interest in children?

24 A. Yes, ma'am.

25 Q. And is that something that you continuously do as the

Chappell - Direct by Ms. Zack

1 courses and the certifications became available?

2 A. That's correct.

3 Q. Now, can you tell Court how you became involved in this
4 particular case?

5 A. In January of 2011, I received information from our Dallas
6 office regarding an individual who was believed to have resided
7 in the Houston, Texas, area by the name of William Craig
8 Noonan. This information was based on at that time an ongoing
9 investigation by HSI Dallas to an individual identified as
10 Timothy Whittington. It involved the production and
11 distribution of child pornography by Mr. Whittington and
12 believed through Mr. Noonan and then one other individual, who
13 I later came to know as David Barry.

14 Q. Okay. And in order to investigate this, were you provided
15 with certain information from HSI Dallas?

16 A. Yes, ma'am.

17 Q. And did that information include e-mail addresses or IP
18 addresses associated with Mr. Noonan?

19 A. Yes, ma'am. The information packet I received had two
20 summonses and related returns. The first summons was related
21 to the e-mail addresses that were used by Mr. Noonan and Mr.
22 Barry to exchange correspondence with Mr. Whittington.

23 Q. And what provider was used for that?

24 A. That was Microsoft Network, MSN.

25 Q. Okay. And is that information -- oh, and what was the

Chappell - Direct by Ms. Zack

1 other summons that you got back, from what other provider?

2 A. The other summons was related to -- was from AT&T, and it
3 related to the IP addresses associated with the log-ins from
4 the e-mail accounts from the other summons.

5 Q. Okay. And that information is contained in Government's
6 Exhibits 18 and 19 that's already been admitted; is that
7 correct?

8 A. That is correct, ma'am.

9 Q. You've reviewed those exhibits?

10 A. Yes, ma'am.

11 Q. And that's the information -- some of the information you
12 used to obtain a search warrant for Mr. Noonan's residence; is
13 that correct?

14 A. That is correct.

15 Q. Okay. And that search warrant was executed when?

16 A. February 8th of 2011.

17 Q. And as part of that process, do you photograph the
18 residence?

19 A. Yes, ma'am.

20 Q. And are those photographs -- or some of those photographs
21 contained in Government's Exhibit 21?

22 A. That is correct.

23 Q. And looking at 21A, is that the home where you executed the
24 search warrant?

25 A. That is correct.

Chappell - Direct by Ms. Zack

1 Q. And to the best of your knowledge, who owns that home?

2 A. William Craig Noonan -- or actually his mother, I believe,
3 owns it.

4 Q. And he lived there with another individual; is that
5 correct?

6 A. Yes, ma'am.

7 Q. And the Internet and all of that was in the other
8 individual's name?

9 A. The roommate's name, correct.

10 Q. And you verified that with the roommate?

11 A. Yes, ma'am.

12 Q. Okay. Was the roommate interviewed?

13 A. Yes, ma'am.

14 Q. And did he indicate that he ever participated in any of the
15 these nudist -- claimed nudist activities or any activities
16 with the children?

17 A. No, ma'am, he did not.

18 Q. And did he tell you which computers belonged to whom and
19 make all of those explanations at the time the warrant was
20 executed?

21 A. Yes, ma'am.

22 Q. Based on your investigative knowledge at that time and the
23 interviews, was he cleared of any involvement in any of these
24 charges?

25 A. Eventually, yes, ma'am, he was.

Chappell - Direct by Ms. Zack

1 Q. Now, when you searched this residence, I assume that based
2 on your training and experience there are certain things that
3 draw your attention?

4 A. Yes, ma'am.

5 Q. Okay. And you're looking specifically for computers, for
6 pictures, for cameras, things like that, correct?

7 A. Correct.

8 Q. And had you at this time seen any picture of Mr. Noonan and
9 children naked?

10 A. Yes, ma'am.

11 Q. Okay. And that image was provided to you from Dallas?

12 A. That is correct.

13 Q. Did you compare that image to Mr. Noonan's driver's license
14 to verify that that was, in fact, the individual whose home you
15 were at?

16 A. Yes, ma'am.

17 Q. Okay. So you go and you execute this warrant and you take
18 pictures. And I want to draw your attention to Government's
19 Exhibit 21k. And what is Government's Exhibit 21k?

20 A. They are children's toys, specifically a Nerf basketball
21 set and another Super Hero Squad toy.

22 Q. And these were found in the home; is that correct?

23 A. Mr. Noonan's residence, correct.

24 Q. Okay. Prior to executing the warrant, did your research
25 reveal whether or not Mr. Noonan had any children?

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1 A. I had found no information stating that Mr. Noonan had any
2 children.

3 Q. And to this date are you aware of whether or not Mr. Noonan
4 has any children?

5 A. I do not know of any children Mr. Noonan has, correct.

6 Q. All right. Now, did you also investigate the roommate?

7 A. Yes.

8 Q. Did he have any children?

9 A. He had no children as well.

10 Q. Okay. And these toys were found in Mr. Noonan's home?

11 A. Correct.

12 Q. And what about the items in 211?

13 A. Yes.

14 Q. Is that part of the same --

15 A. That's the same from the previous picture.

16 Q. Okay.

17 A. It's a better shot.

18 Q. And m, 21m, what was that?

19 A. That's a kite set that was found in Mr. Noonan's, I
20 believe, bedroom.

21 Q. And let's talk about 21o.

22 A. That's a --

23 Q. What is that?

24 A. -- a Lego brick set also found in Mr. Noonan's bedroom.

25 Q. Okay. Now, let's talk about the computer media. You

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1 seized computer media at that residence, did you not?

2 A. Yes, ma'am.

3 Q. And I want to draw your attention to Government's Exhibit
4 10, which is the Dell laptop, service tag number H0YJKB1. Are
5 you familiar with that item?

6 A. Yes, ma'am. It would be the one with the University of
7 Texas Longhorn symbol on it.

8 Q. Okay. And this is Government's Exhibit 10; is that
9 correct?

10 A. Yes, ma'am.

11 Q. Okay.

12 *MS. ZACK:* Your Honor, would it be okay to put the
13 physical evidence on the table here?

14 *THE COURT:* That would be fine. Thank you.

15 *MS. ZACK:* Okay. Thank you.

16 BY MS. ZACK:

17 Q. And where was that item located?

18 A. Mr. Noonan's residence, in the TV room next to a blue
19 chair.

20 Q. And Government's Exhibit 11?

21 A. Is the white computer desktop.

22 Q. Okay. And this was located where?

23 A. That was located in a desk in the -- I guess it would be
24 called more the formal living room, at the front of the house.

25 Q. Okay. And those would correspond to the pictures 21i and

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1 21j of the search photos; is that correct?

2 *MS. ZACK:* Can we see 21i and j?

3 BY *MS. ZACK:*

4 Q. That's the laptop right here, correct?

5 A. That is correct, yes, ma'am.

6 Q. And the white box is in 21j?

7 A. Yes, ma'am.

8 Q. Okay. And this was all at Mr. Noonan's residence.

9 Did you also find a camera there?

10 A. Yes, ma'am.

11 Q. And that would be Government's Exhibit No. 8?

12 *MS. ZACK:* Your Honor, may I approach?

13 *THE COURT:* You may. You need not ask permission to
14 approach the witness, either side.

15 *MS. ZACK:* Thank you, Your Honor.

16 BY *MS. ZACK:*

17 Q. Is this No. 8?

18 A. Yes, ma'am.

19 Q. Okay. And this was found where, Special Agent Chappell?

20 A. I believe in Mr. Noonan's bedroom.

21 Q. Okay. Now, just so we can get this out of the way, Item
22 No. 10, the laptop, the hard drive in that, where was that
23 manufactured?

24 A. In Thailand.

25 Q. And the white box?

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1 A. Also in Thailand.

2 Q. Also in Thailand. And the camera?

3 A. In China.

4 Q. China. Okay. Now, can you describe for the Court -- we
5 saw the picture of the front of the house. This is not a large
6 house; is that correct?

7 A. No, ma'am.

8 Q. And how many bedrooms were in the house?

9 A. Three bedrooms.

10 Q. And how many were being used as bedrooms?

11 A. Two.

12 Q. Okay. And what was the third bedroom being used as?

13 A. Storage.

14 Q. Okay. No bed in that bedroom?

15 A. No, ma'am.

16 Q. Okay. Let's talk about the other two bedrooms. You said
17 that Mr. Noonan had a roommate?

18 A. Yes, ma'am.

19 Q. And was one of those bedrooms designated as his bedroom?

20 A. That is correct.

21 Q. Okay. And that would leave one other bedroom, and that was
22 Mr. Noonan's bedroom; is that correct?

23 A. Yes, ma'am.

24 Q. And that would be contained in the picture 21g?

25 A. Yes, ma'am.

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1 Q. Okay. And was there -- were there any other sleeping areas
2 in this home?

3 A. Yes, ma'am.

4 Q. What was that?

5 A. In the family room, TV room, there was a bed made up
6 against the wall.

7 Q. And that's contained in Exhibit 21h?

8 A. Yes, ma'am.

9 Q. Okay. I'm going to direct your attention, Special Agent
10 Chappell, to Government's Exhibit No. 5. And can
11 you without -- other than using initials, can you identify the
12 individuals in that exhibit?

13 A. On the far right is Mr. Noonan, and then the two children
14 are O.B. and R.B. They are identified as Mr. Barry's two
15 children.

16 Q. Okay. And that picture is taken where?

17 A. In Mr. Noonan's bedroom.

18 Q. And that's based on your comparing the search -- what you
19 saw at the search and the photos of the search to this picture,
20 correct?

21 A. That is correct.

22 Q. And where was this picture found, do you know?

23 A. This was found on Mr. Barry's laptop.

24 Q. Okay. And just so we're clear, is Mr. Noonan related in
25 any way to these children, either through adoption,

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1 biologically, anything?

2 A. No, ma'am.

3 Q. And it appears in this picture that Mr. Noonan and at least
4 the child that he has his arm around are shirtless; is that
5 correct?

6 A. That is correct.

7 Q. Now, how many -- well, did you analyze the items that have
8 been moved into evidence, Items 10, 11, and 8, forensically?

9 A. Yes, ma'am.

10 Q. And did you do that yourself or was there another forensic
11 analyst?

12 A. Initially I did have assistance from another analyst. He
13 assisted with acquiring the images of the hard drives.

14 Q. Okay. And when you say "acquiring the images of the hard
15 drives," you're talking about Government's Exhibit 12, the
16 forensic images of both?

17 A. Yes, ma'am.

18 Q. Okay. And in order to get those, you essentially copy the
19 hard drives from these items?

20 A. Yes, ma'am. It's a form of copying the data off of the
21 hard drives in a manner that allows us to maintain the
22 integrity of the original device.

23 Q. Okay. And that would be Government's Exhibit 12 contains
24 both of those, is that correct --

25 A. From Mr. Noonan's --

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1 Q. -- both from the white box and the --

2 A. Yes, ma'am.

3 Q. -- UT laptop for --

4 A. Yes, ma'am.

5 Q. -- that lack of a better description? Okay.

6 And this is Government's Exhibit 12 that I'm
7 holding up here, correct?

8 A. Yes, ma'am.

9 Q. All right. So you forensically image them and then you do
10 what?

11 A. Then I'll take it, and utilizing the FTK and EnCase, both
12 programs, I'll process the data -- or the images. And it will
13 put it into a format that is easier to look at and to read, and
14 then I analyze that data to see what was contained on the
15 suspect hard drive.

16 Q. And have you created a DVD with the images that you believe
17 to be child pornography from the Dell laptop of Mr. Noonan?

18 A. Yes, ma'am.

19 Q. And those contain the Barry children; is that correct?

20 A. That is correct.

21 Q. And that would all be contained in Government's Exhibit 13;
22 is that correct?

23 A. Yes, ma'am.

24 Q. Okay. And that's a DVD coming from the forensic image?

25 A. Yes, ma'am.

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1 Q. And how many images -- are you aware of how many images
2 there were?

3 A. Approximately 57 images.

4 Q. Okay. And from the white box, did you do the same thing?
5 Did you pull out just the images that you believed were child
6 pornography of the Barry children?

7 A. Yes, ma'am.

8 Q. And that's Government's Exhibit 14?

9 A. Yes, ma'am.

10 Q. And the camera, that has what's called an SD card in it; is
11 that correct?

12 A. Yes, ma'am.

13 Q. Is that equivalent to a hard drive for the camera? What is
14 it?

15 A. It's flash memory. It's just a more -- way of storing
16 data.

17 Q. Like a thumb drive?

18 A. Thumb drive, correct.

19 Q. Okay. And Government's Exhibit No. 9 contains some of
20 those images, correct?

21 A. That is correct.

22 Q. Okay. And Government's 15 contains all of it, correct?

23 A. Correct.

24 Q. All right. So let's talk about what was found on the
25 camera. There was more than what's in Government's Exhibit

Chappell - Direct by Ms. Zack

1 No. 9, correct?

2 A. That is correct.

3 Q. Okay. And not all of these images that you found were
4 child pornography, correct?

5 A. That is correct.

6 Q. What would you say the ratio was, as far as normal, regular
7 camera images to child pornography?

8 A. My best estimate is probably four to one, maybe five to one
9 of normal versus CP.

10 Q. Okay. And did you examine these images?

11 A. Yes, ma'am.

12 Q. And of images in the home, how many of them approximately
13 would you say were clothed?

14 A. Probably more than half were clothed.

15 *MR. JARVIS:* Judge, I'm sorry. I would object. Are
16 you talking about from the camera or from all?

17 *MS. ZACK:* The camera.

18 *MR. JARVIS:* Okay. Thank you.

19 *THE COURT:* So that takes care of your objection?

20 *MR. JARVIS:* Yes, ma'am. Thank you.

21 *THE COURT:* All right. Thank you.

22 BY MS. ZACK:

23 Q. And in the home -- or outside of the home, how many were
24 the children undressed?

25 A. None.

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1 Q. And let's look at the images in Government's Exhibit 9, and
2 let's start with 9A. And what is picture 9A, to the best of
3 your ability to describe that?

4 A. To the left is Mr. Noonan. To the right is Mr. Barry.
5 It's either O.B. or R.B. handing a camera to Mr. Barry.

6 Q. And that camera, is that Government's Exhibit 8 that we
7 just admitted into evidence?

8 A. No, ma'am.

9 Q. In fact, that is Government Exhibit 26; is that correct?

10 A. That is correct.

11 Q. And where was that camera found?

12 A. That camera was actually taken on February 7th by HSI
13 Dallas during their warrant at Mr. Barry's residence.

14 Q. Okay. And that camera somehow traveled to Houston; is that
15 correct?

16 A. Yes, ma'am.

17 Q. And you know this is in Houston because this picture that
18 we're looking at, 9A, is in Mr. Noonan's residence; is that
19 correct?

20 A. That is correct.

21 Q. And you believe, based on the other pictures, that this is
22 one of Mr. Barry's children that's handing this camera to
23 Mr. Barry?

24 A. That is correct.

25 Q. Or taking the camera from Mr. Barry?

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1 A. Either way, yes, ma'am.

2 Q. Okay. And let's look at 9B. And you believe this to be
3 who?

4 A. O.B. and R.B.

5 Q. And this was also found on Mr. Noonan's camera, this image?

6 A. That is correct.

7 Q. Okay. And 9c -- and just so we're clear, those children
8 had no clothes on in that picture?

9 A. That is correct.

10 Q. Okay. And the one child facing us, his genitals were
11 exposed?

12 A. Correct.

13 Q. Okay. 9c is who?

14 A. Either O.B. or R.B. and Mr. Noonan.

15 Q. And in this picture it appears that the child has nothing
16 on at least from the waist up and neither does Mr. Noonan?

17 A. That is correct.

18 Q. All right. And 9d, is this also one of the Barry children
19 taken at the Noonan residence?

20 A. Correct. Yes, ma'am.

21 Q. And in this the child's genitals are exposed?

22 A. Yes, ma'am.

23 Q. And 9e, this is taken where?

24 A. In Mr. Noonan's residence.

25 Q. And do you know where in the residence?

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1 A. I believe in the family -- the formal living room. It's a
2 room that was towards the front of the house, between the front
3 wall of the house and where the TV room we earlier viewed was
4 at.

5 Q. And the child in this picture is -- their genitals are
6 exposed?

7 A. Yes, ma'am.

8 Q. And 9f, what is this a picture of, Special Agent Chappell?

9 A. One of the Barry children laying next to Mr. Noonan's dog
10 and Mr. Noonan laying in his bed, taken at his residence.

11 Q. And are both Mr. Noonan and the child without clothes?

12 A. Correct.

13 Q. And let me ask you this: What appears to be on the floor
14 that the child and the dog are lying on?

15 A. It's some sort of cot or makeshift mattress.

16 Q. Okay. And that's in Mr. Noonan's bedroom?

17 A. That is correct.

18 Q. Okay. And 9g, is this one of the Barry children in the
19 Noonan home?

20 A. Yes, ma'am.

21 Q. And that's the back end of Mr. Noonan's dog?

22 A. Yes, ma'am.

23 Q. And the child's genitals are exposed?

24 A. Yes, ma'am.

25 Q. And 9f -- I'm sorry, h, what is that a picture of?

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1 A. Mr. Noonan in the center, again, his dog, and one of the
2 Barry children on the right-hand side, laying in Mr. Noonan's
3 bed, in his bedroom.

4 Q. And is anyone wearing clothes?

5 A. No, ma'am.

6 Q. And 9i is a picture of what?

7 A. One of the Barry children laying in between Mr. Noonan's
8 legs, on Mr. Noonan's bed, in his residence. None of them are
9 wearing clothes.

10 Q. And 9j?

11 A. The Barry children are in the bathtub in Mr. Noonan's
12 residence.

13 Q. And just so we're clear, Special Agent Chappell, in this
14 picture the children's genitals are not exposed; is that
15 correct?

16 A. No, ma'am.

17 Q. And nothing wrong with that picture as far as you're
18 concerned? That's just two little boys in the tub?

19 A. That is correct.

20 Q. Okay. And the last picture, 9k, what is that a picture of?

21 A. One of the Barry children laying on Mr. Noonan's black
22 couch, naked, not wearing any clothes.

23 Q. Now, in the -- Item 9, these are just selected images of
24 what's in Item 15, which is all of the pictures from the
25 camera, correct?

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1 A. Correct.

2 Q. And during the process were you -- while the search was
3 going on, were you in contact with the folks in Dallas who had
4 done a search warrant at Mr. Barry's residence?

5 A. That is correct.

6 Q. Okay. And these images that we just talked about, were any
7 of these pictures from Mr. Noonan's camera ultimately found on
8 any of Mr. Barry's computer media?

9 A. Yes, ma'am.

10 Q. And do you know forensically how it got there?

11 A. No, ma'am.

12 Q. Okay. How many different ways could it have gotten there?

13 A. A myriad of different ways. Either it was sent via the
14 Internet, transposed or copied over from a flash drive, another
15 SD card, the SD card from the camera, from a disk, having been
16 placed on a disk and then copied onto the computer. There's
17 any number of ways.

18 Q. Okay. And based on where and how you found the photos, did
19 it appear that the person who put them there knew they were
20 putting them there?

21 A. Yes, ma'am.

22 Q. And how -- why do you believe that forensically?

23 A. The particular placing of the folders, which were user
24 created folders, they were not folders that were created by a
25 system by default or automatic, through any automatic process.

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1 These would have had to have been created by the user.

2 Q. All right. And before we get to that, let's talk about the
3 items that were seized in the search in Dallas. And just so
4 we're clear, you were getting information from Dallas about who
5 these children were, who they belonged to and things like that,
6 correct?

7 A. Yes, ma'am.

8 Q. Were you able to verify the relationship between Mr. Barry
9 and the children?

10 A. Yes, ma'am.

11 Q. And did you do that via the certified copy of the adoption
12 records for R.B. and O.B. that's Government's Exhibit No. 27?

13 A. That is correct.

14 Q. And that document as well as the stipulation, trial
15 stipulation -- the first trial stipulation contained the dates
16 of birth of the children; is that correct?

17 A. That is correct.

18 Q. And they were, in fact, well under the age of 12 at the
19 time this was going on, correct?

20 A. That is correct.

21 Q. They're still under the age of 12, correct?

22 A. That is correct.

23 Q. Okay. Now, let's talk about the things that were seized in
24 Dallas. Government's Exhibit No. 1 is a Dell laptop; is that
25 correct?

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1 A. Yes, ma'am.

2 Q. And that was taken from the Barry residence?

3 A. Yes, ma'am.

4 Q. And was that forensically imaged?

5 A. Yes, ma'am.

6 Q. And that would be Government's Exhibit No. 2; is that
7 correct?

8 A. That is correct.

9 Q. And you've reviewed that forensic image, have you not?

10 A. Yes, ma'am.

11 Q. And did you copy all of what you believe to be child
12 pornography from that and place it on a DVD, which would be
13 Government's Exhibit No. 3?

14 A. Yes, ma'am.

15 Q. Okay. And we took selected images from No. 3 and created
16 Government's Exhibit No. 4; is that correct? That's selected
17 child pornography images from Mr. Barry's laptop?

18 A. That is correct.

19 Q. Okay. Now, let's talk about Exhibit 4a. What is that a
20 picture of?

21 A. That is a picture of Mr. Barry on the back left, Mr. Noonan
22 on the back right, and the two Barry children up front, sitting
23 naked on a couch.

24 Q. And that picture was taken where, by your best guess?

25 A. I do know -- I do not believe it was taken at the Noonan

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1 residence. I'm not sure where.

2 Q. Okay. Is it possible it was taken at the Whittington
3 residence?

4 A. Yes, ma'am.

5 Q. And it's obvious that no one in that picture was taking it,
6 correct?

7 A. That is correct.

8 Q. And so either a third party took that picture or the camera
9 has a timer, correct --

10 A. That's correct, yes, ma'am.

11 Q. -- the camera?

12 A. Yes, ma'am.

13 Q. Okay. Now, let's talk about EXIF data. E-X-I-F, what is
14 that?

15 A. EXIF data is exchangeable image file format. It's a
16 standard that allows for what's called metadata or extra data
17 to be placed within a file, in this particular case that's jpeg
18 or graphic files, and tifs, which are also graphic files.

19 Q. Okay. Now, this particular image of one of the Barry
20 children sitting on Mr. Noonan's exposed penis and the other
21 Barry child leaning up against Mr. Barry's exposed penis,
22 this -- or unclothed penis, because I guess the children are
23 blocking the adult penises from view, was there any EXIF data
24 affiliated with this picture that you could come up with?

25 A. No, ma'am, it had been stripped.

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1 Q. Okay. And this picture was found, though, on Mr. Barry's
2 laptop?

3 A. That is correct.

4 Q. Okay. And was this also found in a folder or file that
5 leads you to believe that the person who put it there knew what
6 they were doing and that it was intentionally placed there?

7 A. Yes, ma'am.

8 Q. Okay. Now, let's talk about images b through, I guess, z
9 or -- and hh and ii. You were able to obtain user account
10 information for those pictures?

11 A. Yes, ma'am.

12 Q. Okay. So let's look at b. And b is a picture of what?

13 A. This is one of the Barry children in Mr. Noonan's bathtub.
14 His legs are placed on the edge of the bathtub, his hands down
15 in the bottom of it, and he's thrusting his hips up to expose
16 his penis.

17 Q. Okay. Varies widely from the innocent bath picture we saw
18 in 9j, correct?

19 A. That is correct.

20 *MR. JARVIS:* Judge, we would object. That's leading.

21 *THE COURT:* I'll sustain. You can refrain from
22 leading.

23 BY MS. ZACK:

24 Q. Special Agent Chappell, what is the difference between the
25 image in 4b and 9j?

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1 A. Besides the obvious that it's only one child, the pose is
2 very different. The child's positioning is not natural. It
3 would not be natural in a bathtub. And the exposure of his
4 penis is pretty much the focus of -- and his nudeness is pretty
5 much the focus of this picture, as opposed to the other one.

6 Q. Now, you're not able to say who took this picture, correct?

7 A. No, ma'am.

8 Q. But were you able to determine with what device this
9 picture was taken?

10 A. Yes, ma'am.

11 Q. And would that information be contained in Government's
12 Exhibit 6b?

13 A. That is correct.

14 Q. And Government's Exhibit 6b -- I'm sorry, Government's
15 Exhibit 6a, which refers to --

16 A. 6b.

17 Q. -- Exhibit 4b, and on page 2 of that exhibit, please, what
18 does this information tell you? Can you explain to the Court
19 what we're looking at?

20 A. This is considered the exchangeable image file format, EXIF
21 data that's contained within the graphic file of that
22 particular picture. All digital graphic files are nothing but
23 code. So what this allows for is a standard for camera makers
24 to place data that they deem important, such as date and time
25 of when the picture was taken, if it's enabled GPS, which in

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1 this model it was not, make, model of the camera that took it,
2 shutter speed, all of this information.

3 Q. And what camera were you able to determine took this
4 picture?

5 A. The Casio camera that belonged to Mr. Noonan.

6 Q. Okay. And you talked about date and time. Let's talk
7 about date and times on cameras.

8 A. Yes, ma'am.

9 Q. Who decides what date and time is on a camera?

10 A. The manufacturer sets it to a predetermined date when it's
11 brand-new. When the user gets it, the user is responsible for
12 updating that time to the current date and time that they're
13 using it, and then that date and time is maintained by the
14 battery within the camera.

15 Q. Okay. And these cameras are rechargeable, correct?

16 A. That's correct.

17 Q. What happens if the battery dies to the date and time?

18 A. It will revert back to the predetermined date and time as
19 set by the manufacturer.

20 Q. So was there reliable date/time information based on your
21 examination on these pictures?

22 A. No, ma'am.

23 Q. Were you able to determine, based on your forensic
24 analysis, when these images appeared on Mr. Barry's computer?

25 A. Yes, ma'am.

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1 Q. And when was that?

2 A. There were two sets of dates, the beginning of June and
3 then the middle of June. June 1st and 2nd, and then another
4 set of June 18th or so for some of them. And then I had other
5 images that were created -- of the same images created at an
6 even later date, as far forward as September.

7 Q. Were there images found that you believe were taken during
8 the December trip?

9 A. Yes, ma'am.

10 Q. And where were those found?

11 A. As well as on Mr. Barry's computer within a user created
12 folder.

13 Q. Okay. And those would have had corresponding dates to that
14 as well?

15 A. Yes, ma'am.

16 Q. Okay. So, Government's Exhibit -- just to be clear,
17 Government's Exhibit 6 is the data that demonstrates that 4b,
18 c, d, e, f, g, h, i, j, k, l, m, n -- I'm sorry, l, m, o, p --
19 no n -- q, r, s, t, u, v, w, x, and z, images that were found
20 on Mr. Barry's computer, were all taken with Mr. Noonan's
21 camera?

22 A. That is correct.

23 Q. Okay. So let's go back to Exhibit 4 and look at 4c. And
24 what is that a picture of?

25 A. One of the Barry children laying across Mr. Noonan. And

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1 Mr. Noonan's head and face is against the child's neck and
2 Mr. Noonan's dog is laying next to them and they're laying in
3 Mr. Noonan's bed, in Mr. Noonan's residence, all naked.

4 Q. And what about 4d -- oh, and let me ask you this: You
5 don't know who took that picture, correct?

6 A. No, ma'am.

7 Q. What is this a picture of?

8 A. This is Mr. Noonan holding one of the Barry children upside
9 down. The child's head is in the groin area of Mr. Noonan.
10 His hand is on the child's face or head area, and the child's
11 groin area and penis and testicle are close to Mr. Noonan's
12 face and chin. They are nude, not wearing any clothes. And,
13 again, this is on Mr. Noonan's bed, in Mr. Noonan's residence.

14 Q. And 4e?

15 A. One of Mr. -- one of the Barry children laying on
16 Mr. Noonan's couch, nude, with their exposed penis, and
17 there's -- Mr. Noonan's cat is on the top of the chair -- or
18 the couch.

19 Q. And 4f -- again, you don't know who took that picture,
20 correct?

21 A. No, ma'am.

22 Q. Just what camera it was taken on?

23 A. Exactly.

24 Q. And what is this a picture of?

25 A. This is Mr. Noonan, who appears to be nude, pressed into

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1 the back of one of the Barry children, who is also nude, in
2 Mr. Noonan's bathroom inside of his residence.

3 Q. And the child's genitals are exposed?

4 A. Yes, ma'am.

5 Q. And 4g?

6 A. Again, Mr. Noonan laying in his bed, nude, with his penis
7 exposed. One of the Barry children is laying across his
8 testicles and penis, holding a photograph, one of the Barry
9 children. Also, Mr. Noonan's dog and cat are in the picture,
10 again, in his residence, in Mr. Noonan's residence.

11 Q. And 4h?

12 A. Mr. Noonan nude, his penis and testicles exposed. One of
13 the Barry children also nude, laying in an opposite position,
14 with his feet across Mr. Noonan's testicles on -- and they're
15 sitting on Mr. Noonan's couch, in his residence.

16 Q. And does it appear to you that Mr. Noonan has an erection
17 or at least a partial erection in this picture?

18 A. In my opinion, yes, ma'am.

19 Q. And is that based on your analysis of the other pictures
20 that you've seen with Mr. Noonan's exposed penis?

21 A. Yes, ma'am.

22 Q. And 4i?

23 A. Mr. Noonan and one of the Barry children, both of them nude
24 with exposed penises, taken in Mr. Noonan's residence, in the
25 TV room.

Chappell - Direct by Ms. Zack

1 Q. And does it appear to you that Mr. Noonan has an erection
2 or at least a partial erection in this picture as well?

3 A. Yes, ma'am.

4 Q. And 4j, this is the same scenario except that the Barry
5 child is facing forward; is that correct?

6 A. That is correct.

7 Q. Also at the same -- do you believe these pictures were
8 taken very close in proximity to each other?

9 A. In timewise, yes, ma'am.

10 Q. Okay. And you don't know who took those pictures?

11 A. No, ma'am.

12 Q. Okay. And 4k, what does this appear to be?

13 A. I believe it's Mr. Noonan nude, with an exposed penis and
14 testicles. One of the Barry children also nude. This is in
15 Mr. Noonan's bathroom, in his residence.

16 Q. And the child is facing Mr. Noonan's penis; is that
17 correct?

18 A. Yes, ma'am.

19 Q. And 4l, what does this appear to be?

20 A. One of the Barry children nude, with his penis exposed, on
21 Mr. Noonan's bed within his residence, and who I assume to be
22 Mr. Noonan's -- well, someone's -- an adult male's buttocks, an
23 anal region exposed.

24 Q. And this was also found on Mr. Barry's computer?

25 A. That is correct.

Chappell - Direct by Ms. Zack

1 Q. Okay. 4m, this is a picture of what?

2 A. Mr. Noonan and the two Barry children, one of which you can
3 see his penis, and Noonan's dog sitting on Noonan's bed, in his
4 bedroom.

5 Q. Now, let's talk about this particular picture. The Barry
6 children didn't take this picture, did they?

7 A. No, ma'am.

8 Q. And Mr. Noonan didn't take this picture, did he?

9 A. No, ma'am.

10 MR. JARVIS: We object, Judge. It calls for
11 speculation. He wasn't there.

12 THE COURT: Do you want to rephrase to clarify?

13 MS. ZACK: Sure.

14 THE COURT: Thank you.

15 BY MS. ZACK:

16 Q. Other than if a timer was used, the people in this picture
17 didn't take the picture, did they?

18 A. That is correct.

19 Q. Okay. Are you aware of who took the picture?

20 A. No, ma'am.

21 Q. And did you discuss with Mr. Barry's roommate whether he
22 ever took any pictures of these children with Mr. Noonan?

23 A. Yes, ma'am.

24 Q. And what did he tell you?

25 A. He vehemently denied it.

Chappell - Direct by Ms. Zack

1 Q. And based on the information you've gathered, Mr. Barry was
2 the only other adult that traveled with these children to
3 Houston -- was the only adult?

4 A. Yes, ma'am.

5 Q. Let's look at Government's Exhibit n. What is this?

6 A. That is who I believe to be Mr. Noonan on top of one of the
7 Barry children, who appears to be nude. Mr. Noonan's face is
8 within the lower abdomen/groin area of the child.

9 Q. And what is in the upper left-hand corner?

10 A. I believe that is a Buzz Lightyear stuffed doll.

11 Q. A toy?

12 A. A toy, yes, ma'am.

13 Q. Was that toy found at Mr. Barry's -- at Mr. Noonan's home?

14 A. No, ma'am.

15 Q. And 4o?

16 A. Again, Mr. Noonan nude, his penis and testicles are
17 exposed. One of the Barry children, whose buttocks are
18 exposed, standing in a doorway in Mr. Noonan's residence. It's
19 actually the entryway to, I believe, Mr. -- to the living room.

20 Q. And 4p?

21 A. The two Barry children, one of them whom is nude, with
22 exposed penis and testicles, laying on a makeshift mattress in
23 Mr. Noonan's bedroom.

24 Q. Would it be fair to say that the children didn't take this
25 picture?

Chappell - Direct by Ms. Zack

1 A. Yes, ma'am.

2 Q. And this picture was found on Mr. Barry's computer?

3 A. That is correct.

4 Q. And 4q?

5 A. This is Mr. Noonan nude, laying next to one of the Barry
6 children with the Barry child pressed up against him, on the
7 floor in Mr. Noonan's bedroom.

8 Q. And are any of the individuals in this photo clothed?

9 A. No, ma'am.

10 Q. And 4r?

11 A. Mr. Noonan laying on his bed nude, with his testicles and
12 penis exposed, one of the Barry children laying across
13 Mr. Noonan's chest, holding a photograph, and Mr. Noonan's dog
14 next to them.

15 Q. And 4s?

16 A. Again, Mr. Noonan laying nude on his bed, with his exposed
17 testicle and penis. The dog and the cat are to the right, and
18 one of the Barry children, who is also nude, laying up against
19 Mr. Noonan's body to the left.

20 Q. And Mr. Noonan's right hand is where?

21 A. On the child's buttocks.

22 Q. And 4t?

23 A. One of the Barry children nude, with his penis exposed,
24 laying on the floor -- or on a makeshift bed next to
25 Mr. Noonan's dog.

Chappell - Direct by Ms. Zack

1 Q. And 4u?

2 A. Again, one of the Barry children laying nude, with his
3 exposed penis, on the makeshift bed next to -- laying on
4 Mr. Noonan's dog, in Mr. Noonan's bedroom.

5 Q. And let's look at 4v.

6 A. This is Mr. Noonan with the two Barry children on the left
7 and unknown child on the right, all are nude, with exposed
8 penises, except for the one that Mr. Noonan is holding -- he is
9 nude, but you can't see his testicles -- or his penis --
10 standing in a wading pool, and I believe this to be
11 Mr. Noonan's backyard.

12 Q. Could this be a friend of Mr. Noonan's house?

13 A. It's possible.

14 Q. Okay. You never found a kiddie pool, did you?

15 A. No, ma'am.

16 Q. 4w?

17 A. Same picture, same pose, just one of the children has his
18 mouth open.

19 Q. And the Barry children are in this picture, correct?

20 A. That is correct.

21 Q. And do you know who took this picture?

22 A. No, ma'am.

23 Q. And -- or these two pictures. And these were found on
24 Mr. Barry's computer?

25 A. Yes, ma'am.

Chappell - Direct by Ms. Zack

1 Q. And we'll talk about the file paths in a minute. Let's
2 talk about 4x.

3 A. This is Mr. Noonan with one of the Barry children on his
4 back with his arm around Mr. Noonan's neck. The Barry child is
5 nude. And Mr. Noonan's holding the Buzz Lightyear doll from
6 the previous picture.

7 Q. And the child's genitals are pressed up against
8 Mr. Noonan's back?

9 A. Yes, ma'am.

10 Q. And 4y?

11 A. It's a picture of Mr. Noonan laying on a black -- or
12 sitting on a black sofa. One of the Barry children nude, with
13 his exposed penis, is laying across Mr. Noonan's lap, his head
14 on Mr. Noonan's groin area.

15 MS. ZACK: Your Honor, Exhibits 4aa through 4gg were
16 subject to a conditional admission by this Court. At this time
17 the Government would want to go through those pictures.

18 THE COURT: These are the pictures of the --

19 MS. ZACK: Unknown --

20 THE COURT: -- the other children?

21 MS. ZACK: The unknown child and the unknown adult
22 male found on Mr. Barry's computer.

23 THE COURT: All right. Well, why don't you make the
24 predicate that you want me to consider to perform the balancing
25 test that the rules call for.

Chappell - Direct by Ms. Zack

1 MS. ZACK: Yes, Your Honor.

2 THE COURT: Because I gather you are offering these
3 pursuant to --

4 MS. ZACK: 414.

5 THE COURT: -- 414 and 404(b)?

6 MS. ZACK: Yes, absolutely, Your Honor.

7 THE COURT: All right. Thank you.

8 BY MS. ZACK:

9 Q. Special Agent Chappell, when you reviewed the forensic
10 image of the hard drive of Mr. Barry's computer, you reviewed
11 the entire hard drive, correct?

12 A. That is correct.

13 Q. Now, the pictures we were talking about up until now, 4a
14 through 4z, those were found where?

15 A. In user created folders within the user account called
16 "owner" in this case.

17 Q. Okay. And those were contained in files that had been
18 named by whoever set that file up, correct?

19 A. That is correct.

20 Q. Okay. Where were the images in 4aa through 4gg found?

21 A. They were found within a temporary folder within a
22 Messenger cache, which is a folder system related to Windows
23 Live and Microsoft instant messaging program.

24 Q. Okay. What does that mean to people that don't speak
25 computer?

Chappell - Direct by Ms. Zack

1 A. When a computer user is utilizing an instant messaging
2 program, in this case Windows Live and Windows Messenger, the
3 system files are -- you have to install this program onto your
4 computer, and it will create folders on your computer for it to
5 use. And one of them being a temporary file, which allows for
6 the temporary storage of data that the Instant Messenger
7 program uses, particularly files or images that are shared via
8 the Instant Messenger program.

9 Q. And based on your training and experience, you believe that
10 these images got there how?

11 MR. JARVIS: Objection. Leading.

12 THE COURT: Refrain from leading. Just rephrase it.

13 BY MS. ZACK:

14 Q. How do you believe the images got there?

15 A. I believe that they -- well, they got there by use of the
16 Instant Messenger program, Windows Messenger.

17 Q. Okay. And meaning they were sent?

18 A. Or received.

19 Q. Okay. By Mr. Barry's computer?

20 A. That is correct.

21 Q. Okay. And was there any way for you to forensically
22 determine whether he sent them or he received them?

23 A. These particular images, no, ma'am.

24 Q. Okay. And was the Instant Messenger cache also where you
25 recovered the chats that are subject of Government's Exhibit 7?

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1 A. No, ma'am.

2 Q. Where were those chats recovered?

3 A. Those were actually recovered in parts from several
4 different areas within the installed operating system, system
5 volume information, other temporary cache, and then unallocated
6 or unspecified areas.

7 Q. Okay. So going back to just the images themselves, they
8 were the subject of some type of Instant Messenger exchange
9 between individuals?

10 A. That is correct.

11 Q. Okay. And is there anything that you were able to
12 determine that tells you when they got on the computer?

13 A. Yes, ma'am.

14 Q. And when was that?

15 A. The -- well, in these -- no, on these particular images,
16 because they were carved data, the dates and times are not
17 associated with them. They're not -- no longer part of that
18 file.

19 Q. Okay. So you were unable to determine when they got on
20 there?

21 A. These particular ones, that is correct.

22 Q. Okay. And based on your training and experience, did you
23 find these images to meet the federal definition of child
24 pornography?

25 A. Yes, ma'am.

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1 Q. And did you bookmark them as such?

2 A. Yes, ma'am.

3 Q. Okay.

4 MS. ZACK: Your Honor, the United States believes that
5 these pictures demonstrate a predilection, an interest that
6 Mr. Barry has in -- a sexual interest in children. These are
7 not his children. There is no indication that this child is a
8 relative. Let me, before I go further with my argument --

9 BY MS. ZACK:

10 Q. Special Agent Chappell, have you been able to identify this
11 child?

12 A. No, ma'am.

13 Q. And in all of the computer media that has been seized at
14 both Mr. Barry's and Mr. Noonan's residence, was there any clue
15 or indication as to who this child was?

16 A. No, ma'am.

17 Q. Was any pictures of this child or this unknown adult found
18 on any of Mr. Noonan's computer media?

19 A. No, ma'am.

20 THE COURT: All right.

21 MS. ZACK: Your Honor, we believe that it demonstrates
22 that Mr. Barry has a sexual interest in children and especially
23 in child pornography images of children and we would ask that
24 they be admitted to show that the images that he had -- the
25 other images were not a mistake, were not an accident, and were

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1 not just the innocent vacation pictures of a supposedly naive
2 individual.

3 *THE COURT:* Did you want to respond?

4 *MR. JARVIS:* Yes, ma'am. Judge, he's failed to
5 testify that it was David Barry that actually accepted these.
6 Just because he owns that computer doesn't mean that he
7 accepted them. There's no testimony that anybody opened those
8 up and saved them. In fact, they're just in the Messenger
9 cache, so that cannot prove that the person sitting in front of
10 the computer ever even knew that they existed, much less opened
11 them, received them, looked at them, asked for them. There's
12 no evidence of that at all. So in that case they're not
13 relevant to anything. They can't prove Mr. Barry saw them.

14 *MS. ZACK:* Your Honor, I believe that absolutely goes
15 to weight, not to admissibility.

16 *THE COURT:* What was the e-mail address that was the
17 originating address that sent it to Mr. Barry's Messenger
18 cache?

19 *MS. ZACK:* Your Honor, I believe that Special Agent
20 Chappell testified, he doesn't know if these originated from
21 Mr. Barry and were sent from someone else or if they
22 originated --

23 *THE COURT:* Is there any metadata that reveals
24 anything about the travels of these photographs?

25 *THE WITNESS:* No, ma'am. Related specifically to the

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1 EXIF data, when most images are transported through the
2 Internet, particularly a program like this, it strips a lot of
3 that information off.

4 *THE COURT:* And there's nothing you can do to
5 forensically recreate it, restore it, or identify it?

6 *THE WITNESS:* Well, it is restored. It's just the
7 data that's contained in there is the data that's put on there
8 by the Instant Messenger program --

9 *THE COURT:* No, I understand that.

10 *THE WITNESS:* -- but the dates and times are not
11 associated with it.

12 *THE COURT:* What about any information about the
13 identity of the address from which these were sent, obtained,
14 however they got to this computer?

15 *THE WITNESS:* The only thing that I can say towards
16 that is on other analysis conducted, the only accounts,
17 Microsoft instant messaging accounts that I came across were
18 the wfglassman account. That's the only one that I found on
19 the computer.

20 *THE COURT:* And what does that tell you?

21 *THE WITNESS:* That was the one being utilized by
22 Mr. Barry.

23 *THE COURT:* All right. Is there any -- excuse me. Is
24 there any information at all about how long these photographs
25 were on the computer?

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1 *THE WITNESS:* No, ma'am.

2 *THE COURT:* Is there any information as to when or
3 whether they had been accessed?

4 *THE WITNESS:* Yes, ma'am.

5 *THE COURT:* Tell me about that information.

6 *THE WITNESS:* The whole reason this file -- this
7 folder exists is because it's nothing but code going across the
8 Internet. So the program has to have a place to temporary
9 store the folder -- or the images when it creates them on your
10 screen. So if they're in this folder, they appeared on the
11 screen of the computer.

12 *THE COURT:* So they had been opened?

13 *THE WITNESS:* Yes, ma'am.

14 *THE COURT:* And viewed?

15 *THE WITNESS:* Yes, ma'am.

16 *THE COURT:* Do you have any idea about how often that
17 had occurred?

18 *THE WITNESS:* No, ma'am. At least one time. At least
19 one time.

20 *THE COURT:* All right. Anything further?

21 *MR. JARVIS:* May I ask a few questions on this issue,
22 Judge?

23 *THE COURT:* You may.

24 *MR. JARVIS:* If Mr. -- whoever was sitting in front of
25 Mr. Barry's computer had sent these to somebody through IM,

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1 they would -- you would have found them someplace else on
2 Mr. Barry's computer, correct?

3 *THE WITNESS:* No, sir. On an Instant Messenger
4 program when you have the chat window up, you're seeing both
5 sides of the conversation. Okay. So whatever -- if I'm
6 chatting with someone, whatever I type in or send pops up in
7 that window, whatever they type and send pops up in that same
8 window. It's just a chain of conversation. So if I send an
9 image, that image pops up initially, but I sent it to this
10 person.

11 *MR. JARVIS:* Sure. But that image that you send has
12 to come from within the computer somewhere? You've got to go
13 up to XJ4 and put it in the IM to send it, right?

14 *THE WITNESS:* Oh, I understand what you're saying.
15 Yes, sir, that is correct. You have to have the image
16 somewhere on the computer.

17 *MR. JARVIS:* And none of these unknown images were
18 found anyplace else in Mr. Barry's computer, were they?

19 *THE WITNESS:* That is correct.

20 *MR. JARVIS:* So logically, I would think, that means
21 somebody had to send it to him. He didn't send it to anybody
22 else, because he didn't have these pictures already some place
23 else on his computer?

24 *THE WITNESS:* Unless they were deleted and
25 overwritten, and I didn't find them. That's the only other --

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1 what you're saying and or deleted and overwritten and that's
2 why they weren't recovered is the only two scenarios.

3 *MR. JARVIS:* Okay. And these were carved, which means
4 they were deleted already, correct?

5 *THE WITNESS:* Unallocated, that is correct.

6 *MR. JARVIS:* So that means he -- somebody sitting in
7 front of the computer could have opened it and said, "Oops, I
8 don't want that," deleted it, seen it one time, and that's how
9 it showed up here on all six or seven of these pictures,
10 correct?

11 *THE WITNESS:* Not in this particular folder, unless he
12 went and found this particular folder --

13 *THE COURT:* Okay. Keep going.

14 *THE WITNESS:* -- which is a -- it's not a readily
15 available folder and typically in most, on default settings, on
16 Windows Vista, it's a hidden folder. You would have to unhide
17 all your folders to see it. He would have to go to that
18 particular folder and delete it from there.

19 *THE COURT:* So are you saying that based on your best
20 understanding, that these pictures were opened at some point,
21 accessed, viewed, and not deleted because of the type of folder
22 in which they were stored or in which they resided?

23 *THE WITNESS:* At some point they were deleted, ma'am,
24 based on -- because it's a temporary folder, so it's only a
25 certain size. So as things are added, it deletes and

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1 overwrites automatically.

2 *THE COURT:* But it's an automatic deletion? It's
3 not --

4 *THE WITNESS:* Correct.

5 *THE COURT:* -- deleted purposefully by the user of the
6 computer?

7 *THE WITNESS:* That is correct, ma'am.

8 *THE COURT:* All right. So it's overwritten as opposed
9 to deleted?

10 *THE WITNESS:* Yes, ma'am.

11 *MR. JARVIS:* May I continue, Judge?

12 *THE COURT:* You may.

13 *MR. JARVIS:* I'm confused. Because it doesn't
14 automatically get overwritten every time. A person can hit the
15 delete button when a picture shows up on Windows Messenger,
16 correct?

17 *THE WITNESS:* I know certain other programs do. I
18 can't tell you for sure if you can click on a Windows Messenger
19 button -- window and remove that photograph from the
20 conversation.

21 *THE COURT:* Well, that's an indication that there --
22 it was deleted as opposed to overwritten?

23 *THE WITNESS:* Right. Maybe I'm not understanding.

24 *MR. JARVIS:* Okay. If I'm looking at my computer and
25 somebody sends me an IM, okay --

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1 *THE WITNESS:* Uh-huh.

2 *MR. JARVIS:* -- I'm able to look at it and read it
3 now. Back before 2012, it was just a notice on MSN saying,
4 "You have a message," right?

5 *THE WITNESS:* Yes.

6 *MR. JARVIS:* And you would have to open that to see
7 what the message is? You don't know what the message is before
8 2012 when they went to MSN Live. You just had a notification
9 saying, "You've got a message," right?

10 *THE WITNESS:* No, sir. MSN Messenger was an open
11 instant messaging program, and it allowed for a real-time
12 one-on-one or one on several chats with other users, where that
13 dialogue window would pop up and as I'm typing something and
14 hit enter, if their dialogue box is open, it pops up
15 automatically right there.

16 *MR. JARVIS:* So the person who's sitting in front of
17 the computer can't stop the other person from sending whatever
18 they want to send, right?

19 *THE WITNESS:* That is correct.

20 *MR. JARVIS:* And if they send something they don't
21 want or don't like or they don't want anybody else to see, they
22 have the delete button right there on the computer, they can
23 just hit delete, correct?

24 *THE WITNESS:* Possibly. Again, I'm not sure if MSN
25 has that feature directly. I know other instant messaging

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1 programs do though.

2 *MR. JARVIS:* In fact, all of the other ones that
3 you're aware of have that feature? The ones on the computers
4 today, you can delete as they show up, right?

5 *THE WITNESS:* Today, nowadays, yes, sir.

6 *MR. JARVIS:* Okay. And you can't tell from the
7 forensic evaluation whether or not it was automatically
8 overwritten or overridden by some other information or somebody
9 deleted it when it first popped up, right?

10 *THE WITNESS:* No, sir, I would not be able to
11 determine that --

12 *MR. JARVIS:* So it's just --

13 *THE WITNESS:* -- as you stated it.

14 *MR. JARVIS:* I'm sorry. So it's just as likely that
15 whoever was sitting in front of Mr. Barry's computer saw these
16 images, they hit "delete," correct?

17 *THE WITNESS:* I wouldn't be able to -- not knowing if
18 the program allowed that, I wouldn't be able to say if that
19 could happen or not. But, yes, it is theoretically possible.

20 *MR. JARVIS:* But whoever was sitting there didn't take
21 these pictures, the unknowns, as we've been calling them, and
22 save them to his computer so he could look at them or she could
23 look at them later, correct?

24 *THE WITNESS:* That is correct, yes, sir.

25 *MR. JARVIS:* Okay.

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1 *THE COURT:* If it is deleted intentionally, somebody
2 pushes the delete button when the image is opened, would it
3 nonetheless remain in the temporary folder unless and until it
4 was overwritten in the automatic operation of the computer?

5 *THE WITNESS:* Yes, ma'am, that is my understanding.

6 *THE COURT:* All right. And if it wasn't deleted,
7 would it remain -- but opened, would it remain in that folder
8 unless and until it was purposefully -- unless and until it was
9 overwritten by the computer?

10 *THE WITNESS:* That is correct.

11 *THE COURT:* All right. Anything further?

12 *MR. JARVIS:* But you don't have any evidence that
13 these pictures were saved by whoever was sitting in front of
14 the computer?

15 *THE WITNESS:* These particular images were not saved
16 to any user -- typical user accessible area, no, sir.

17 *MR. JARVIS:* You never found them any place else on
18 the computer, basically?

19 *THE WITNESS:* No, sir. Correct. That is correct.

20 *MR. JARVIS:* Okay. No other questions, Judge.

21 *THE COURT:* All right.

22 *MR. JARVIS:* We renew our objection.

23 *THE COURT:* All right. I'm going to overrule the
24 objection. I find that the similarity of the pictures to a
25 pose in subject to those that are the subject of the pictures

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1 that are already in evidence of the known Barry children,
2 Mr. Barry and Mr. Noonan, makes it much less likely that these
3 simply arrived accidentally as opposed to being purposefully
4 directed to Mr. Barry or obtained by him. I find that that is
5 a -- that there is a sufficient basis for an inference of tying
6 them to Mr. Barry's computer as the intended place for them to
7 be, to respond to the argument you've raised that there is no
8 information as to how they came to be there in a way that would
9 associate it with Mr. Barry sufficient for admissibility.

10 I also find that the lack of forensic information
11 making it certain or establishing clearly that these were
12 deleted as opposed to simply overwritten goes to their weight
13 and not their admissibility.

14 With respect to the 414 balancing test, I find
15 that the photographs are relevant to showing whether the --
16 whether Mr. Barry's interest in images of men and young boys is
17 one that is associated with a -- simply a nudist lifestyle that
18 he and his family were pursuing as a matter of private choice
19 or if it was something that is relevant to showing motive and
20 intent to knowingly receive and produce child pornography. I
21 do find that the evidence does demonstrate -- is sufficiently
22 probative of Mr. Barry's sexual interest in children and in men
23 having sexual contact with children that it outweighs the
24 potentially prejudicial effect that this evidence would have.

25 So I'm going to overrule the objection and I'm

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1 going to admit the photographs under 414. It would also be
2 admissible under 404, although 414 is of course a clearer path,
3 because it so clearly allows propensity evidence with respect
4 to the charged crimes.

5 *MR. JARVIS:* Your Honor, I understand the ruling. But
6 we also objected based upon the fact that the Government could
7 not prove that Mr. Barry was at the computer and received them,
8 opened them, or saved them.

9 *THE COURT:* I'm overruling that objection, too. It's
10 his computer. There's evidence that these had to be opened and
11 viewed and accessed, and Mr. Barry is the person who owned the
12 computer and based on the information was clearly at least
13 among those most likely to have opened and viewed the images
14 that were sent to his IM Messenger account and it is his
15 account.

16 *MR. JARVIS:* Thank you, Judge.

17 *THE COURT:* Overruled.

18 *MS. ZACK:* Your Honor, would it be possible to take a
19 five-minute bathroom break?

20 *THE COURT:* Sure. Sure.

21 *MS. ZACK:* Thank you.

22 *THE COURT:* Five minutes. Thank you.

23 *(Recess from 10:40 a.m. to 10:45 a.m.)*

24 *(Open court, Defendant present.)*

25 *THE COURT:* Go ahead and take the stand, please, sir.

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1 Thank you.

2 Go ahead, please. Please seated.

3 MS. ZACK: Thank you, Your Honor.

4 **DIRECT EXAMINATION CONTINUED**

5 BY MS. ZACK:

6 Q. Special Agent Chappell, I want to discuss with you images
7 4aa through 4gg, and I believe that you indicated those were
8 found in the Instant Messenger cache; is that correct?

9 A. That is correct.

10 Q. Okay. So, let's look at 4aa, and this is an image of what?

11 A. An unknown male child, under the age of 18, laying in a
12 bathtub, naked, with his penis erect and exposed.

13 Q. Above the waterline?

14 A. Yes, ma'am.

15 Q. Okay. And 4bb?

16 A. This same unknown child from the previous image, nude,
17 penis and testicles and part of the anus exposed, sitting on a
18 black couch.

19 Q. And in reference to this particular picture, did you find
20 similar pictures of the Barry children sitting on a sofa at
21 Mr. Noonan's home?

22 A. Yes, ma'am.

23 Q. And 4cc, what is this a picture of?

24 A. An unknown male child on a -- nude or naked on -- with his
25 penis exposed, on an exercise bicycle.

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1 Q. And dd?

2 A. Unknown male child, nude, with exposed penis, next to an
3 adult -- unknown adult male with an exposed penis as well.

4 Q. And 4ee?

5 A. What appears to be a nude adult male laying on the ground
6 with the unknown child naked, laying on top of the unknown
7 male. The child's penis is exposed.

8 Q. And were there any similar images of children sitting -- or
9 the Barry children, specifically, sitting in Mr. Noonan's lap?

10 A. Yes.

11 Q. And 4ff?

12 A. An unknown male child on the left, nude, with exposed
13 penis. Unknown adult male on the right also with an exposed
14 penis.

15 Q. And 4gg?

16 A. This is visually the same picture as the previous picture.
17 It was just in a larger format.

18 Q. Okay. And the images all except for the 4ee, all of those
19 are taken indoors; is that correct?

20 A. That is correct.

21 Q. Now, let's look at 4hh. And this is now pictures that were
22 found on Mr. Barry's computer within folders, correct? This is
23 not from the Instant Messenger cache?

24 A. That is correct.

25 Q. And this appears to be what?

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1 A. One of the Barry children nude, sitting on a black couch,
2 with his legs across Mr. Noonan's leg and by his penis and
3 testicle. Mr. Noonan is obviously nude sitting on the couch.

4 Q. Okay. And 4ii?

5 A. Mr. Noonan sitting on a black couch, nude, with exposed
6 penis and testicle. One of the Barry children sitting on his
7 back, with his legs up in the air spread apart, with an exposed
8 penis and testicle. Mr. Noonan has taken the child's right leg
9 and held it up to his face and mouth.

10 Q. And in this picture and in 4hh, having looked at the other
11 images, do you believe that Mr. Noonan appears erect or
12 partially erect?

13 A. Yes, ma'am.

14 Q. Now, let's talk about the file paths and where exactly the
15 images other than 4aa through gg, those images in 4, where were
16 they found on Mr. Barry's computer?

17 A. There were two -- this particular operating system had one
18 user account called "owner."

19 Q. Okay.

20 A. Within "owner," there were two main folders. One called
21 "Craig Houston" and another one called "David and the boys."
22 And these were the first folders within the owner account that
23 they would access in order to see these images.

24 Q. Okay. And within those folders, were there subfolders?

25 A. Yes, ma'am. The folder "Craig Houston" had two subfolders

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1 entitled "Craig H" and "others."

2 Q. Okay. And the other folder -- not the one "others," the
3 second folder that there was?

4 A. "David and the boys" --

5 Q. Yes.

6 A. -- contained two subfolders. One was "dor," d-o-r, and
7 "new folder."

8 Q. Okay. I'm sorry. You said "new"?

9 A. New folder, n-e-y -- or n-e-w, I'm sorry.

10 Q. Okay. And what do you believe d-o-r stood for, without
11 revealing any names?

12 A. D for David, and O and R is the first letter of each of the
13 children's names.

14 Q. Okay. Now, how do these folders get on someone's computer?

15 A. They are either created by the user and named -- well, they
16 have to be named by someone. These are not typical folders
17 that you would find default by an operating system or some
18 program. So some user created them at some point, then they
19 could be either be transferred over by thumb drive or flash
20 drive or some other media or the user created them at the time
21 they were copying over pictures and placed them into this
22 folder.

23 Q. Okay. Now, in this particular case, looking at the
24 evidence from Mr. Barry's computer, was there similar file
25 names or nomenclature used on Mr. Noonan's computer?

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1 A. Yes, ma'am.

2 Q. Can you explain that to the Court, please?

3 A. Images recovered off Mr. Noonan's computer, both what I
4 believe to be child pornographic in nature and those that
5 weren't, had file names of "David and the boys" and then a
6 series of numbers next to them, 01, 02, 03, so forth.

7 Q. Okay.

8 A. That name matches the folders of the "David and the boys"
9 listed under the owner program on Mr. Barry's computer.

10 Q. And if those images were sent to Mr. Barry, to the computer
11 and he put them in that folder, he would have had to have named
12 that folder "David and the boys"?

13 A. That is correct.

14 Q. Okay. It doesn't come as a folder named "David and the
15 boys"?

16 A. Right. If it was sent via e-mail or something, typically
17 it would not.

18 Q. Okay. And these images that were found in the "David and
19 the boys," some of those are the exact same images that were
20 found on Mr. Noonan's computer?

21 A. That is correct.

22 Q. Okay. Now, and these folders were folders within folders,
23 some of them?

24 A. Some of them were, yes, ma'am.

25 Q. Okay. And did you break down the folders and the

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1 subfolders and count the images that were in each?

2 A. Yes, ma'am.

3 Q. Okay. So in looking at that information, what were you
4 able to determine?

5 A. Within the folder "Craig Houston," that folder itself
6 contained a hundred and fifty-six photos within the root of
7 that photo and then it also contained two subfolders, "Craig H"
8 and "others."

9 Q. All right. Before we get to the subfolders --

10 A. Yes, ma'am.

11 Q. -- how many of the 156 folders did you bookmark as being of
12 interest to this case or child pornography in general?

13 A. 18 of those photographs were bookmarked.

14 Q. Okay. And that's the first folder "Craig Houston"?

15 A. That is correct.

16 Q. And then in the subfolder under Craig Houston called "Craig
17 H," how many photos were there?

18 A. 28 photographs, 8 of which I bookmarked.

19 Q. Okay. And then under "Craig Houston, others," there were
20 how many?

21 A. 31 photographs.

22 Q. Were there any of R.B. or O.B. in the "others"?

23 A. No, ma'am.

24 Q. Okay. Now, let's talk about the user's owner, "David and
25 the boys" folder. That folder itself, did that contain images?

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1 A. Yes, ma'am.

2 Q. And how many?

3 A. 87.

4 Q. And how many did you bookmark as being child pornography?

5 A. Eight.

6 Q. And under "David and the boys," the subfolder "d-o-r," how
7 many images?

8 A. 75.

9 Q. And how many did you bookmark?

10 A. 11.

11 Q. And then under "David and the boys," "new folder," were
12 there pictures of R.B. and O.B.?

13 A. Yes.

14 Q. Okay. Were any of those marked as being child pornography?

15 A. No, ma'am.

16 Q. Okay. Now, these folders -- so if we were to turn on
17 Mr. Barry's computer, how long would it take us to get to those
18 folders?

19 A. Very quickly, accessing the user account.

20 Q. Okay. And did you find any evidence that anything on
21 Mr. Barry's computer was password protected?

22 A. No, ma'am.

23 Q. Is there any way for you to tell how many times these
24 images were viewed?

25 A. No, ma'am.

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1 Q. What do you know about these images as far as when they
2 were placed on the computer?

3 A. The images in these -- on Mr. Barry's computer were created
4 on June 1st and 2nd, again on June 18th, and then again -- of
5 2010, and then again in December of 2010.

6 Q. And did those dates all correspond with the dates you were
7 given for the trips that Mr. Barry took with the boys to
8 Houston?

9 A. Yes, ma'am.

10 Q. Okay. Now, let's talk about whether someone else could
11 have forced these images to Mr. Barry's computer. First of
12 all, is that technologically possible?

13 A. Yes.

14 Q. Okay. In this case would it have been possible, based on
15 your forensic analysis and what we know about remote services?

16 A. No, ma'am.

17 Q. Okay. What are remote services?

18 A. Remote service is a function in Windows operating systems
19 that allows a remote user or a third party somewhere else to
20 access a computer, to actually gain control of that computer.

21 Q. Like when I call IT and tell them I don't know what's going
22 on and they possess the cursor and go in? I have to do stuff
23 to allow them in to do that?

24 A. That is correct.

25 Q. Okay. So are you able to tell when you forensically

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1 analyze a computer whether the remote services are turned on or
2 turned off?

3 A. That is correct, yes, ma'am.

4 Q. And when a computer is purchased, what is the default for
5 remote services?

6 A. Off.

7 Q. And that's a safety precaution, correct?

8 A. Correct.

9 Q. And in this case did you find any evidence that Mr. Barry's
10 remote services were ever turned on?

11 A. No, ma'am. I found it to be turned off.

12 Q. Okay. Now, let's talk about Exhibit 26. That was
13 Mr. Barry's camera; is that correct?

14 A. Yes, ma'am.

15 Q. And that camera was manufactured where?

16 A. In China.

17 Q. And the images -- images were taken off of that?

18 A. Yes, ma'am.

19 Q. Okay. And those images are contained in Government's
20 Exhibit 20, selected -- some of those images actually? There
21 were more images than what we picked, correct?

22 A. That is correct.

23 Q. Okay. So let's talk about the images taken on Mr. Barry's
24 camera. And let's look at No. 20a. And what is this a picture
25 of?

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1 A. Mr. Noonan on the left, shirtless, and Mr. Barry on the
2 right, shirtless, laying in Mr. Noonan's bed.

3 Q. And this is similar to images found both on Mr. Noonan and
4 Mr. Barry's computer?

5 A. That is correct.

6 Q. Okay. And 20b, what do you believe that is?

7 A. Mr. Noonan's penis.

8 Q. And that's based on your analysis of the other pictures?

9 A. That is correct.

10 Q. And is that the same bedspread?

11 A. Yes.

12 Q. And based on the picture that you've analyzed of Mr. Barry
13 and Mr. Noonan side by side with their penises exposed, you
14 believe this is Mr. --

15 A. Noonan's.

16 Q. -- Noonan's penis?

17 A. Yes.

18 Q. Mr. Barry, for lack of a better term, has no pubic hair?

19 A. Or very little, yes, ma'am, at the time.

20 Q. Okay. In the images that we've seen?

21 A. Correct.

22 Q. Okay. And this is Mr. Noonan's penis in a flaccid state?

23 A. Semi, yes, ma'am.

24 Q. Okay. Now, let's look at 20c. And that's one of the

25 pictures that you used to determine that that -- that 20b was

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1 Mr. Noonan's penis, correct?

2 A. Yes, ma'am.

3 Q. And 20 -- and, oh, in this image, this shows what between
4 Mr. Barry and Mr. Noonan?

5 A. Mr. Noonan on the left and Mr. Barry on the right, nude.
6 Mr. Noonan has his hand draped across Mr. Barry's shoulder and
7 chest, and Mr. Barry has his arm against Mr. Noonan's leg.

8 Q. Would you characterize this as an image of just friends or
9 do you believe there's a romantic --

10 *MR. JARVIS:* Objection. Leading.

11 *THE COURT:* I think it was not finished yet.

12 *MR. JARVIS:* I'm sorry.

13 *THE COURT:* And she was about to ask the alternative
14 that would make it not leading. Go ahead, please.

15 BY MS. ZACK:

16 Q. Do you believe, based on your review of this picture, that
17 this is an image of individuals that are just friends or does
18 it demonstrate a romantic interest among the parties?

19 *MR. JARVIS:* Objection. Speculation.

20 *THE COURT:* Rephrase it to establish a better
21 predicate, if you can.

22 BY MS. ZACK:

23 Q. Based on the images you've viewed in this case and the
24 images that we have seen so far, how would you characterize the
25 relationship between the individuals in this picture?

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1 *MR. JARVIS:* Objection. Speculation.

2 *THE COURT:* I'm going to allow it.

3 A. I believe there's intimacy involved.

4 Q. And what do you base that on?

5 A. Not only the closeness, the placement of Mr. Barry's right
6 hand to the area where it's at, the comfortableness next to
7 each other and Mr. Noonan's arm draped across Mr. Barry's chest
8 and Mr. Barry holding Mr. Noonan's hand.

9 Q. Thank you. Now, let's look at 20d. What is this a picture
10 of?

11 A. This is a picture of Mr. Barry on the left, Mr. Noonan in
12 the middle, with the Barry children sitting on Mr. Noonan, and
13 an unknown male subject on the far right, taken at Mr. Noonan's
14 residence. All the persons depicted are nude, and you can see
15 Mr. Barry's exposed penis.

16 Q. And when do you believe this picture was taken?

17 A. I believe this was taken around New Year's Eve.

18 Q. And that belief is based on what?

19 A. Based on recovered chats in which Mr. Barry discussed that
20 they were having a New Year's Eve party at Mr. Noonan's house
21 for New Year's Eve from 2010 to 2011, and within that chat
22 Mr. Barry discusses having R.B. take pictures of everybody and
23 everybody would be nude.

24 Q. Now, let's look at images 20e. And 20e, f, g, and h, those
25 are a series of photos of children painting, correct, of the

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1 Barry children painting?

2 A. That is correct.

3 Q. And Mr. Barry painting?

4 A. Yes, that is correct.

5 Q. And based on your search of the Noonan residence, this is
6 not -- these images were not taken at the Noonan residence?

7 A. No, ma'am.

8 Q. Okay. So, this is 20e. Let's see 20f and 20g and 20h.
9 And these are -- none of these are at the Noonan residence?

10 A. I don't believe so, no, ma'am.

11 Q. Okay. And these were taken on Mr. Barry's camera?

12 A. That is correct.

13 Q. Okay. And 20i, where was this picture taken?

14 A. This picture was taken at Mr. Noonan's residence.

15 Q. And 20j, is this Mr. Noonan's residence?

16 A. No, ma'am.

17 Q. Do you know whose residence this is?

18 A. I believe this to be Mr. Barry's residence.

19 Q. And are the children wearing clothes?

20 A. Yes, ma'am.

21 Q. Okay. And 20k?

22 A. I believe also taken at Mr. Barry's residence.

23 Q. And this is one of the Barry children?

24 A. Correct.

25 Q. Wearing clothes?

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1 A. Yes, ma'am.

2 Q. The child's not wearing socks, is he?

3 A. No, ma'am.

4 Q. Okay. And 20l, also part of the same group of pictures?

5 A. Yes, ma'am.

6 Q. And this child's wearing, I guess, a big Superman T-shirt?

7 A. Yes, ma'am.

8 Q. No shoes or socks?

9 A. That I can tell, no, ma'am.

10 Q. And 20m, is this also in the Barry residence, you believe?

11 A. Yes, ma'am.

12 Q. And this is one of the children fully dressed?

13 A. Correct.

14 Q. Holding some type of Christmas decoration?

15 A. Garland or something, yes, ma'am.

16 Q. Okay. And 20n?

17 A. Also a Barry child wearing that same Superman shirt from an
18 earlier picture.

19 Q. And m?

20 A. Same Barry child, appears to be decorating the Christmas
21 tree, wearing a white Superman shirt.

22 Q. And p?

23 A. Another Barry child fully clothed, not wearing socks,
24 decorating a Christmas tree, taken at the -- I believe to be
25 the Barry residence.

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1 Q. And 20q?

2 A. The two Barry children sitting at a table, clothed.

3 Q. Okay. And this picture, other than by timer, does not
4 appear that it could have been taken by the Barry children,
5 correct?

6 A. That is correct.

7 Q. And what about 20r?

8 A. The two Barry children clothed, sitting in front of a
9 Christmas tree.

10 Q. And other than with a timer, they couldn't have taken that
11 picture?

12 A. That is correct.

13 Q. And 20s?

14 A. One of the Barry children holding up a pajama set. Barry
15 child appears to be clothed. I believe this also to be at the
16 Barry residence.

17 Q. It looks as if this was a Christmas present?

18 A. Correct.

19 Q. And 20t?

20 A. This is Mr. Noonan fully clothed with a Barry child sitting
21 partially on him and against him, also fully clothed. This was
22 taken in a chair at Mr. Noonan's residence.

23 Q. Okay. Now, how many pictures did you find of Mr. Peterson
24 naked?

25 A. None.

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1 Q. And who is Mr. Peterson?

2 A. Mr. Barry's life partner.

3 Q. And how many pictures did you find of him with the children
4 clothed?

5 A. Numerous.

6 Q. And was Mr. Barry in some of those pictures clothed?

7 A. Yes, ma'am.

8 Q. How many pictures of Mr. Peterson did you find on
9 Mr. Noonan's computer?

10 A. None.

11 *THE COURT:* Did Mr. Peterson have a computer?

12 *THE WITNESS:* I do not know, ma'am.

13 BY MS. ZACK:

14 Q. Now, let's talk about the Christmas pictures in reference
15 to when the other picture, the one with the unknown male that
16 you believe was at the New Year's party. These were on
17 Mr. Barry's camera, correct?

18 A. That is correct, yes, ma'am.

19 Q. And based on the order -- the order we showed them in is
20 not the order that they came off the camera, correct?

21 A. That is correct.

22 Q. Okay. You looked at the order they appeared in on the
23 camera, correct?

24 A. Correct.

25 Q. And chronologically did they show the picture of the boys

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1 opening the presents and the around the tree pictures were
2 taken before the picture of the three adult naked males and the
3 Barry children?

4 A. That is correct.

5 Q. Okay. And that corresponds to the information you have
6 that Mr. Barry traveled to Houston between Christmas and New
7 Year's 2010 going into 2011?

8 A. That is correct.

9 Q. Okay. Now, doing your forensic analysis, you do not -- you
10 don't just look for pictures; is that correct?

11 A. That is correct, yes, ma'am.

12 Q. Okay. What other things do you look for? What else do you
13 analyze?

14 A. I look for any type of documents, text documents, e-mails,
15 chats, any type of corresponds between the user and anyone else
16 and any other data that may be pertinent to the investigation.

17 Q. Okay. Do you look at searches?

18 A. Yes, ma'am.

19 Q. And did you check for certain search terms in Mr. Barry's
20 computer?

21 A. Yes, ma'am.

22 Q. And what type of things were you looking for?

23 A. Well, I checked the entire carved or parsed search queries
24 that were available. There were approximately 30,000 search
25 entries on Mr. Barry's computer. Probably about 12,000 of

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1 those were actual unique searches. They weren't doubled or
2 tripled. And then I reviewed that information for anything
3 that may have pertained to the investigation.

4 Q. Okay. And what did you find that you believed pertained to
5 the investigation?

6 A. I found approximately 72 Google searches for True Nudists.

7 Q. And True Nudists is what?

8 A. The Web site where Mr. Whittington, Mr. Barry, and
9 Mr. Noonan all corresponded or met and also where I also
10 recovered other chats and stuff where it appeared Mr. Barry
11 visited this Web site and contacted other individuals.

12 Q. Okay. Before we get to the chats, did you go to True
13 Nudists?

14 A. Yes, ma'am.

15 Q. And can you describe for the Court, what is this Web site?

16 A. True Nudists is a Web site that particularly advertises
17 itself for males interested in nudism.

18 Q. Okay. Not a family nudism Web site?

19 A. It didn't appear anti-family, but the main page talks about
20 adult male nudism.

21 Q. Were there any warnings or discussions about individuals
22 that can participate in True Nudists?

23 A. Yes, ma'am.

24 Q. And what was that?

25 A. It had to be 21 years of age or older in order to sign up

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1 for the Web site and you did have to have a membership in order
2 to view anything past the basic information on the Web page.

3 Q. Okay. But you could go into the chat -- you could chat
4 without being a member?

5 A. No, ma'am. You had to be a member in order to chat.

6 Q. Oh, then I'm confused. There's two different kinds of
7 members though, right? There's a paid membership and an unpaid
8 membership?

9 A. Right. Correct. Correct.

10 Q. Okay. I'm sorry. So you become a member and you can chat
11 in certain chat rooms without paying?

12 A. That is correct. Yes, ma'am.

13 Q. Okay. And then besides True Nudists -- and we'll talk
14 about chats that you may have found later -- what other
15 searches did you find?

16 A. I found search terms and most of these were in Google,
17 using Google as a search engine, was Bluebonnet Nudist Resort.

18 Q. And have you looked up the Bluebonnet Nudist Resort?

19 A. Yes, ma'am.

20 Q. And where was that located?

21 A. I believe that was in Decatur, Texas.

22 Q. Okay. And for those of us that are geographically
23 challenged, where is that?

24 A. I believe that's up by Dallas, northwest of Dallas-Fort
25 Worth region.

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1 Q. Okay. And the Bluebonnet Nudist Resort, was this a child
2 friendly resort?

3 A. Yes, ma'am.

4 Q. And what can you tell me about the Bluebonnet Nudist Resort
5 from going to their Web site? Did they -- well, let me ask you
6 this: These nudist resorts, you looked at a couple of
7 different Web sites --

8 A. Yes, ma'am.

9 Q. -- did some have restrictions about who can wear clothes,
10 who can't wear clothes, when you can wear clothes?

11 A. Yes, ma'am.

12 Q. Okay. Was Bluebonnet one of these cites?

13 A. Yes, ma'am.

14 Q. And what was the -- and I don't mean to use the term
15 "restriction," but what was the qualification?

16 A. Adult males all had to be clothing free. Being nude was
17 mandatory. Women and children were clothing optional.

18 Q. Okay. And on their Web site were there pictures of nude
19 children?

20 A. No, ma'am.

21 Q. And was there any pictures that you saw in the Barry or
22 Noonan computers that matched any of the background or anything
23 from this resort?

24 A. No, ma'am.

25 Q. Okay. Do you have any knowledge whether or not Mr. Barry

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1 ever traveled to this resort?

2 A. I have no knowledge of that, no, ma'am.

3 Q. Okay. You only know he searched it?

4 A. That is correct.

5 Q. And what about, was there a search for a Lone Star Nudist
6 Resort?

7 A. Yes, ma'am.

8 Q. Or a Lone Star Nudist?

9 A. Yes, ma'am.

10 Q. And did you come up -- how many different things matched
11 "Lone Star Nudist"?

12 A. On the --

13 Q. Meaning is there a resort that's called that and is there a
14 group?

15 A. Yes, ma'am.

16 Q. Are there two different things?

17 A. No, I understand. There is a resort. There's also a --
18 lack of a better term, an online club. One of those happened
19 to have a local organization here in Houston. There were many
20 different things related to Lone Star Nudists.

21 Q. Okay. And also were there age restrictions on the Lone
22 Star Club --

23 A. Yes, ma'am.

24 Q. -- in Houston?

25 A. Yes, ma'am.

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1 Q. And what was that?

2 A. 21 or older.

3 Q. Okay. And was that a family group, the Lone Star, or was
4 that an all male?

5 A. The nudist resort was family --

6 Q. Uh-huh.

7 A. -- similar restrictions as the Bluebonnet. The other
8 organizations were strictly adults.

9 Q. Okay. And did -- was that the extent of the terms that
10 piqued your investigative interest, as far as the searches?

11 A. Yes, ma'am. There were many searches for nudists, nudist
12 chat cites, nudist resorts in Texas. Those are what were
13 actually -- there was actually records of those search terms
14 being used. Many of the things I looked for and I conducted
15 searches for on Mr. Barry's computer returned no results or had
16 very few results.

17 Q. Okay. And based on what you learned in your investigation,
18 did you look for searches that had to do with family nudism?

19 A. Yes, ma'am.

20 Q. And searches that had to do with therapeutic nudism for
21 families?

22 A. Yes, ma'am. Yes, ma'am.

23 Q. And did you find -- and did it return anything?

24 A. Nothing, ma'am. The only thing that -- involving anything
25 that had to do with therapy at all, was a search for

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1 respiratory therapists.

2 Q. Okay. All right. Now, let's talk about, you said that
3 this True Nudists cite, there's a chat feature or a chat forum?

4 A. Yes, ma'am.

5 Q. Okay. And you recovered chats in this case?

6 A. Yes, ma'am.

7 Q. And these chats, when you reviewed them, did they discuss
8 nudism?

9 A. Yes, ma'am.

10 Q. Did they discuss sexuality?

11 A. Yes, ma'am.

12 Q. Did they discuss children and children being naked and
13 their sexuality?

14 A. Yes, ma'am.

15 Q. Did they discuss masturbation?

16 A. Yes, ma'am.

17 Q. And how many chats were there that you were able to
18 recover?

19 A. I recovered over 37,000 instant messages.

20 Q. Okay. And of those you said that this is recovered from
21 space that has not yet been rewritten over; is that correct?

22 A. Some of it is. Some of it is system folders and areas that
23 are not user specific but the program itself puts them there
24 and in different places on the hard drive, yes, ma'am.

25 Q. Okay. You didn't find any chats that Mr. Barry had

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1 specifically saved?

2 A. No, ma'am, I did not.

3 Q. Okay. So would Mr. Barry know that these chats -- well,
4 let me rephrase that. Would a person chatting know that the
5 computer saves this stuff without having any kind of computer
6 knowledge?

7 A. Probably not, no, ma'am.

8 Q. Okay. And of the -- what did you say, 37,000 messages?

9 A. Approximately 37,000, yes, ma'am.

10 Q. Were you able to put together several representative
11 examples?

12 A. Yes, ma'am. I was able to put together several
13 conversations --

14 Q. Okay. That's probably a better way to --

15 A. -- together, yes, ma'am.

16 Q. Okay. So when you say you covered 37,000 messages, these
17 are individual back and forth that you're talking about?

18 A. That is correct, yes, ma'am.

19 Q. Okay. And you were able to put them together based on
20 where they were into -- some, into conversations?

21 A. That is correct.

22 Q. Okay. And not all of it was able to be done that way,
23 correct?

24 A. That is correct.

25 Q. Okay. And why is that?

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1 A. Just because of the way it was saved. These are --

2 Q. By the computer?

3 A. By the computer, correct. There's individual
4 conversations. Each one is considered an individual message
5 and so there may be missing files related to that and therefore
6 you have something that I can't make head nor tails of, who
7 sent it, where it came from, and so forth.

8 Q. But the ones that you pieced together, did those reference
9 specific dates and times?

10 A. Yes, ma'am.

11 Q. Okay.

12 *MS. ZACK:* Your Honor, these chats in Government's
13 Exhibit 7 are subject to the same 414/404 analysis. And we
14 believe that the chats demonstrate, again, that Mr. Barry has a
15 sexual interest in children. Some of these chats Your Honor
16 will find discuss being naked with the boys, activities being
17 naked, masturbation, all sorts of sexual innuendo as to
18 children and discuss sending and/or receiving images between
19 Mr. Barry and an unidentified individual wherein they discuss
20 the illegality or the potential problems in sending these
21 images, and Mr. Barry acknowledges that he knows that that's a
22 problem. And we also believe, Your Honor, that the chats by
23 Mr. Barry are also admissions by a party opponent and therefore
24 are admissible.

25 *THE COURT:* Response?

Chappell - Direct by Ms. Zack

1 MR. JARVIS: Yes, ma'am. The chats, if you look at
2 the chats, that's not what they talk about, and out of context.
3 First of all, the agent said he had to piece these together.
4 And if you look closely at a lot of the numbers on the
5 left-hand side of each one of the chats, they're not
6 chronological numbers. So he had to pull these together.
7 These are not a one stream of information that comes as one
8 piece. He had to pull all of these together, which means it
9 was up to his discretion to pick and choose which lines he
10 wanted to include.

11 Second of all, as our earlier objection, he can't
12 put Mr. Barry in front of the computer typing this information.
13 So, without that, it's not relevant.

14 The third issue is, Judge, when you look at the
15 actual language in these chats, it's not talking about child
16 pornography or how much an individual has enjoyed looking at
17 the pictures of R.B. and O.B. being naked at wherever they were
18 naked at. These are general conversations about general
19 things, and a lot of it is conversations about parties or just
20 having R.B. take pictures. And, in fact, a couple of them are
21 just talking about one of the unknowns trying to come on to
22 whoever it is that's using Mr. Barry's name.

23 So there's nothing in these that talk about R.B.
24 or O.B. being in the picture naked and using that for child
25 pornography or production of child pornography. And there's

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1 none of these -- actually there's one at the very end, but the
2 first, all -- I think there's about nine of them are not from
3 Mr. Noonan. We don't know who these other people are.

4 So, we would object because it's not -- it
5 doesn't have anything to do with the production of child
6 pornography or allowing his kids to be in child pornography,
7 because they never talk about producing what -- we're intending
8 to produce child pornography. And the prejudicial effect is
9 completely outweighed by any probative value, as far as on
10 these certain dates in Houston, did Mr. Barry allow his
11 children to -- intentionally allow them to be in child
12 pornography pictures.

13 *THE COURT:* Response?

14 *MS. ZACK:* Yes, Your Honor. First, I don't believe
15 that Mr. Jarvis is correct in saying that it was at
16 Mr. Chappell's discretion as to how he put these together. And
17 I think that Special Agent Chappell can explain to you exactly
18 how that was done. I believe that that's a lack of
19 understanding of the process on Mr. Jarvis's part and a lack of
20 understanding of the forensic process in this case. These are
21 not just randomly pieced together because they made sense to
22 Mr. Chappell. The dates and times demonstrate that this was an
23 exchange between two individuals, one of which, wfglassman, is
24 Mr. Barry.

25 And I believe also that Mr. Jarvis is incorrect

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1 when he talks about the fact that it doesn't reference child
2 pornography. No, the words "child pornography" are never used,
3 but they certainly talk about sending naked images of children,
4 specifically in chat contained in 7c. They talked specifically
5 about Mr. Barry's children. There's extensive conversation
6 with an individual who seems to be very interested in
7 discussing with Mr. Barry O.B.'s circumcision and the
8 activities that Mr. Barry and his children do together when
9 naked and other people, and certainly demonstrate that
10 Mr. Barry is participating in conversations that demonstrate he
11 has a sexual interest in children.

12 These are not conversations about, Oh, hey, you
13 know, we went to the so-and-so resort and had a great time
14 playing volley ball. It all has to do with nudity, penises,
15 masturbation, ejaculation, the children coming of age and how
16 excited that one of the individuals is about having little
17 children's penises rub up against him, about how little boys
18 like their penises being played with, which is a similar
19 allegation to what XXXXXXXX made against Mr. Barry, that he
20 played with his penis while they were lying in Mr. Barry's bed,
21 that it had nothing to do with --

22 MR. JARVIS: I'm going to object, Judge. That's not
23 admitted at this point.

24 MS. ZACK: Yes, they are, Your Honor. This is
25 Exhibits 28a and b. They are admitted. I mean, he has an

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1 objection to them but --

2 *THE COURT:* I admitted them.

3 *MS. ZACK:* Okay.

4 *THE COURT:* I overruled your objection.

5 *MR. JARVIS:* My apologies, Judge.

6 *MS. ZACK:* That this is -- you know, all little boys
7 like their penises being played with. And these are just a
8 selection of the chats. These aren't all the chats. And we
9 believe, once again, like Your Honor in -- when we moved and
10 Your Honor admitted the images of the unknown child, that the
11 similarity in the conversations when compared to the pictures
12 demonstrates that this is not an accident or an innocent -- the
13 innocent vacation images of a nudist.

14 And I think it's a good time to point out, once
15 again, that Mr. Barry's life partner does not appear in any of
16 these images. This was not a family of nudists. This is
17 Mr. Barry's proclivities and his sexual interest in children
18 being explored and enjoyed through the guise of nudism is the
19 Government's premise, if we're going to put it out there, but
20 we believe this shows this is not accident. No one talks like
21 this that isn't sexually interested in children. It's not an
22 accident, and these are Mr. Barry's own words.

23 *THE COURT:* Did you want to respond?

24 *MR. JARVIS:* Just briefly, Judge. First of all, we
25 ask the Court to look at each one individually instead of as a

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1 group, because each one has a different -- each chat that
2 they're offering into evidence, they're not one group, but each
3 chat has a different subject that they are talking about,
4 whoever they are. When they talk -- when the Government says
5 they were talking about masturbation, well, yes, that was a
6 father talking about how he's going to train his growing up
7 boys in the future how to masturbate safely. There's nothing
8 in there sexual at all saying, "I enjoy masturbating my boys."
9 So, while it may be different for us, it's not an illegal
10 conversation. It doesn't talk about child pornography or being
11 sexually excited.

12 There's not a single comment in there, that I'm
13 aware of, where Mr. Barry, or whoever wfglassman is, says he
14 gets sexually excited by the sight of his boys naked or that he
15 wants anybody else to do that. So it's a conversation between
16 nudists and a conversation between grown-ups, but there's
17 nothing about child pornography or sexually being excited
18 sexually about being around naked boys. It's just not in
19 there. They're just trying to use this to color the Court's
20 opinion on the pictures, which is the focal point of this case.

21 So we would ask that the Court take a long hard
22 look at these and see if there's anything about sex with -- and
23 child pornography involved in these chats.

24 *THE COURT:* Did you want to say anything else on
25 behalf of the Government?

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1 *MS. ZACK:* No, I don't think that's necessary, Your
2 Honor.

3 *THE COURT:* All right. There are some of these chats
4 that appear to be less explicitly sexual than others, I agree
5 with that, but there are some that certainly can be viewed as
6 primarily sexual in tone and tenor and content. So I am going
7 to admit them. I find that they are sufficiently probative of
8 the type of interest shared by the participants in the chats,
9 most specifically by wfglassman, who is Mr. Barry. And to --
10 and find that the probative value of the contents of the chats
11 and the occurrence of the chats and the time of the chats
12 outweighs the prejudicial impact of admitting the chats. So
13 I'm going to overrule your objection and I'm admitting Exhibit
14 7, and that will be 7a through n.

15 *MS. ZACK:* And just to clarify, Your Honor. 7a
16 through m are the subject of the 401/404. 7n --

17 *THE COURT:* N, as in Nancy?

18 *MS. ZACK:* N, as in Nancy, is between Mr. Barry and
19 Mr. Noonan, and that would be a whole different admission as
20 coconspirators, et cetera, et cetera.

21 *THE COURT:* I agree with that.

22 *MS. ZACK:* Thank you, Your Honor.

23 *THE COURT:* All right.

24 *MS. ZACK:* May I proceed?

25 *THE COURT:* You may.

Chappell - Direct by Ms. Zack

1 BY MS. ZACK:

2 Q. Okay. Let's discuss these chats, Special Agent Chappell.
3 When you forensically examine the computer, you're able to
4 determine potentially who is speaking, for lack of a better
5 term? I mean, they're typing, right?

6 A. Correct.

7 Q. Okay. And how is it that you know that wfglassman is
8 related -- is Mr. Barry?

9 A. Through information received from the Dallas investigation,
10 through the subpoenas and summons we issued, through
11 information in the chats themselves where wfglassman is
12 referencing things about the Barry children that Mr. Barry
13 would know.

14 Q. Okay.

15 A. Such as the circumcision and other information about school
16 and other things.

17 Q. Okay. And the one common in all of the chats that you
18 recovered is that one of the chatters is wfglassman; is that
19 correct?

20 A. That is correct.

21 MR. JARVIS: Objection. Leading, Judge.

22 THE COURT: Refrain from leading, please.

23 MS. ZACK: I apologize.

24 BY MS. ZACK:

25 Q. How do you determine who the speaker is from the computer

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1 that you seized? Is there a way to do that?

2 A. Yes, ma'am. Based on the file, it will reference -- the
3 code will reference who the sender is -- or the log, who the
4 sender is and who the receiver is.

5 Q. Okay.

6 A. And if it knows that value, then it's there, such as
7 wfglassman, if he sends a picture -- I mean, a chat, if his
8 value is there, that name is there, it will show it to me.

9 Q. Okay. And in 7a through m, as in Matthew, does the
10 wfglassman profile appear?

11 A. Yes, ma'am.

12 Q. Okay. And that -- these chats came from the black Dell
13 laptop taken from Mr. Barry's home?

14 A. Correct.

15 Q. Okay. Now, in looking at the items in the exhibit book --
16 and you don't have one in front of you, do you?

17 A. No, ma'am, I do not.

18 Q. Okay. Mr. Stabe is going to bring you one, so that we can
19 all look together.

20 Can you explain to the Court how to read this
21 information that's in front of us or how you interpreted it?

22 *THE COURT:* And what exhibit are you looking at?

23 *MS. ZACK:* 7a.

24 *THE COURT:* What section?

25 *THE WITNESS:* 7a.

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1 MS. ZACK: 7a.

2 THE COURT: All right.

3 BY MS. ZACK:

4 Q. At the top, what are we looking at?

5 THE COURT: Are you looking at the line that says
6 "source" or "user name"?

7 THE WITNESS: Actually I'm looking at everything in
8 black on the very top.

9 THE COURT: All right. Thank you.

10 A. Where it says "record," "user name," "date and time sent
11 message," the record is strictly a way of marking each of these
12 entries, because all of these are codes. So when it's parsed
13 out to put it in something that -- some sort of reference, it
14 will give it a record number.

15 Q. Okay.

16 A. The next one is the user name. This particular chat --
17 because some of these are different. This particular one, the
18 user name is the person who sent the message. Then it gives
19 the date and time local. That's the date and time this message
20 was created on Barry's computer.

21 Q. Okay.

22 A. Whether it was received and appeared on Mr. Barry's
23 computer or whether it was sent.

24 Q. Okay.

25 A. Then obviously the message, then the source where it came

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1 from, and then the physical sector is the actual on the hard
2 drive where this data actually resides.

3 Q. Okay. And that's as to this particular chat, 7a?

4 A. Correct.

5 Q. Okay. And in 7a, it appears that the -- and you don't know
6 who Andrew is; is that correct?

7 A. No, ma'am, I do not.

8 Q. Okay. It appears that Andrew and wfglassman are talking
9 about who you should tell about being a nudist. Is that a fair
10 assessment?

11 A. Yes, ma'am.

12 Q. And Andrew says, "Someone might call CPS on you for that,"
13 about three quarters of the way down, next to 195?

14 A. Yes, ma'am.

15 Q. And what does wfglassman say?

16 A. "Have to be real careful."

17 Q. And then what does he say?

18 A. "Perverts out there, too."

19 Q. And then?

20 A. And, "Can't get in trouble for that if everyone is nude.
21 Can only get in trouble if you are only one that does not -- if
22 you're the only one that does and not the kids. That's called
23 exposing yourself."

24 Q. So it appears that Mr. Glassman -- or Mr. Barry believes
25 that as long as he's naked with the kids, he can't get in

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1 trouble for taking those pictures?

2 *MR. JARVIS:* Objection. Leading.

3 *THE COURT:* Sustained.

4 BY MS. ZACK:

5 Q. Okay. What do you believe the chat says -- or what does it
6 say?

7 A. It says that Mr. Barry believes that as long as everyone is
8 nude, that he's not going to get in trouble.

9 Q. Okay. Now, let's look at 7b. And when we go to the top of
10 the first page of 7b, can you explain how to interpret or read
11 this particular chat?

12 A. Yes. Basically the same type of header is involved, giving
13 the record, the date, and time. In this particular case the
14 local user is marked, meaning that the local user is
15 wfglassman. This is the Barry computer is what it's identified
16 as the local user.

17 This is a chat message. And then it gives who
18 the sender and who the recipient are of each message. The
19 record number 8727, for instance, the sender is Quateroy5_2000.
20 The recipient of the message is wfglassman.

21 Q. Okay.

22 A. And then it gives where -- the file path of where this
23 information was taken and then the file offset, which is
24 actually where the data physically resides on the hard drive.

25 Q. And going down the column to where it says 8733, do you see

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1 that?

2 A. Yes.

3 Q. Who is the speaker of that?

4 A. Wfglassman, Mr. Barry.

5 Q. And what does wfglassman tell Quarteroy5?

6 A. "My oldest is turning into a little clown and really good
7 with the camera. So he will want to take everyone's picture."

8 Q. And does that thought continue?

9 A. Yes. "Which is good. We'll have fun, pictures to share of
10 the even." And I believe that to mean "evening."

11 Q. And does Quarteroy5 respond?

12 A. Yes. "I'm sure you will. Good for him. We'll have to
13 encourage his interest in photography."

14 Q. And let's talk about 7c. Do we look at 7c as far as the
15 sender received the same way we looked at the last chat?

16 A. Yes, exactly like the last chat, yes, ma'am.

17 Q. Okay. And this chat, a lot of it is about O.B.'s
18 circumcision; is that correct?

19 A. Yes, ma'am.

20 Q. Looking at -- for lack of a better way to reference it, the
21 information next to 6903 --

22 A. Yes, ma'am.

23 Q. -- can you talk about what that says?

24 A. Yes, ma'am. The Roxas13066 --

25 Q. Uh-huh.

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1 A. -- sent the message to wfglassman, Mr. Barry, in which he
2 states: "Is the one who needs surgery on the left of the
3 picture?"

4 Q. And what does Mr. Barry respond?

5 A. "Yep." And then goes on to say, "Did you save the pics?"
6 To which Mr. -- I believe this is Roxas13066 replies, "No."

7 Q. Now, forensically, what do you get from that? What do you
8 believe that means?

9 A. That Mr. Barry or wfglassman shared a photograph on Instant
10 Messenger with this individual Roxas13066.

11 Q. And when you go down to where it says 6910, what does Roxas
12 say?

13 A. Well, he tells him on the previous one, he says, "I still
14 have the window open. The photo share window is open."

15 Q. And what do you believe from that was going on?

16 A. That the -- a digital image, a photograph was shared using
17 the Instant Messenger program.

18 Q. And in 6912?

19 A. Wfglassman, Mr. Barry, sent a message to Roxas13066.

20 "Yeah, the little one is on the left and as you can see, they
21 love to be naked." To which Mr. Roxas replied, "lol."

22 Q. Which means what?

23 A. Chat slang for "laugh out loud."

24 Q. Okay. And further down does Mr. Glassman indicate -- or
25 Mr. Barry indicate whether or not he enjoys being naked?

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1 A. Yes, ma'am.

2 Q. Let's look at 7d. How do we -- do we read that one --

3 THE COURT: Before we go on to another exhibit, I have
4 a conference call that I have to take in just a few minutes.
5 It coincides with lunch, which is why I scheduled it for now.
6 So tell me what your schedule looks like in terms of the
7 remaining time for this witness on direct and how long you
8 anticipate him on cross.

9 MS. ZACK: I don't have a lot more on direct.
10 Probably another 30 to 40 minutes at most, I believe.

11 THE COURT: Is this your only witness?

12 MS. ZACK: Yes, Your Honor.

13 THE COURT: All right.

14 MR. JARVIS: It will probably take three -- probably
15 three hours to do the cross, Judge. It will be lengthy.

16 THE COURT: All right. Let's take a break until,
17 let's say, 1:15 and then we'll resume. Thank you.

18 MS. ZACK: Your Honor, will we have access to the
19 courtroom?

20 THE COURT: Yes.

21 MS. ZACK: Okay.

22 MS. MINICK: Judge, may we leave things here?

23 THE COURT: Yes, you may.

24 MS. MINICK: Thank you.

25 (Lunch recess from 11:55 a.m. to 1:15 p.m.)

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1 (*Open court, Defendant present.*)

2 *THE COURT:* I think we're ready. Go ahead and take
3 the stand, please, sir.

4 All right. You may resume.

5 *MS. ZACK:* Your Honor, before we go forward, I need to
6 make a correction. I told you 20 to 45 minutes. I forgot
7 we're playing the DVDs and I didn't calculate that in --

8 *THE COURT:* All right. That's fine.

9 *MS. ZACK:* -- so I apologize.

10 *THE COURT:* That's fine.

11 *MS. ZACK:* Thank you, Your Honor.

12 **DIRECT EXAMINATION CONTINUED**

13 BY MS. ZACK:

14 Q. All right. I believe, Agent Chappell, we were talking
15 about the chats and we had gotten through c -- d. Okay. We
16 were starting to talk about d. So if you could direct your
17 attention to d, 7d. And looking at the first page of 7d, at
18 the -- how you interpret it, the top part, that black line that
19 you've been describing to us, can you tell us who this
20 conversation is between?

21 A. Mr. Barry and a user named Michael Wright 540.

22 *MR. JARVIS:* Judge, excuse me. We're going to object
23 to identifying it as Mr. Barry. That has not been done at this
24 point. It's speculation. He needs to identify him as the
25 person using wfglassman.

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1 *THE COURT:* I think that there's been testimony that
2 that is an association -- that that is a name that has been
3 linked to Mr. Barry as the e-mail or IM account he was using.
4 So, I'm going to allow it with that understanding.

5 *MR. JARVIS:* All right.

6 *THE COURT:* You can cross-examine him on that if you
7 would like.

8 BY MS. ZACK:

9 Q. And what does wfglassman tell the Michael Wright user in
10 that first line about his location?

11 A. "That we are in Houston now."

12 Q. And the date of this chat?

13 A. December 27, 2010.

14 Q. And what are they discussing in this chat, in general?

15 A. A naked New Year's Eve party.

16 Q. And directing your attention to line -- and for lack of a
17 better way to do it, 7039 on the second page --

18 A. Yes, ma'am.

19 Q. -- does the Michael Wright user refer to wfglassman with a
20 name?

21 A. Yes, he states, "David, be careful."

22 Q. And what is the "be careful" in reference to?

23 A. The naked New Year's Eve party with several adult males
24 that are all supposed to be nude with the two children, the
25 Barry children there as well nude.

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1 Q. And is it apparent whether Mr. Wright is going to be able
2 to attend the party or not?

3 A. No, ma'am, he's not going to be able to attend. He says he
4 wished he could attend.

5 Q. Okay. Now, I want to draw your attention to 7e. And this
6 chat occurred when?

7 A. December 31st, 2010.

8 Q. And who -- with whom is Mr. Barry chatting?

9 A. User name nudemac.

10 Q. N-u-d-e-m-a-c?

11 A. Yes, ma'am.

12 Q. And does any other individual besides Mr. Barry and nudemac
13 show up in this chat?

14 A. Yes, ma'am, Quarteroy5_2000.

15 Q. And has Quarteroy5_2000 been present in any other chat?

16 A. Yes.

17 Q. Okay. Are you able to tell -- is this -- I know you've
18 talked about instant messaging and how this works. How are
19 there three people able to communicate?

20 A. A group chat or group message.

21 Q. And is that the only way that that could show up this way?

22 A. Possibly through having multiple chat windows open also may
23 get several records together, if he uses the same program.

24 Q. Okay. So there's only two possibilities here, is that
25 Mr. Barry is conducting two separate chats, correct?

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1 A. Correct.

2 Q. Or it's a three-way chat?

3 A. Correct.

4 Q. Okay. And in reference to the portion on that first page
5 number 7453 down through 7458, is that all with the nudemac
6 individual?

7 A. Yes, ma'am.

8 Q. And what is the conversation about?

9 A. Mr. Barry is asking nudemac if he can see my boys.

10 Q. And is that -- do you believe that's in reference to a
11 picture?

12 A. Yes, ma'am.

13 Q. And what's the response that nudemac says?

14 A. "How cute, lol."

15 Q. And the next response by nudemac?

16 A. He then goes and tells Mr. Barry to be careful about
17 sending naked pics of kids. You know, it's illegal.

18 Q. And what is Mr. Barry's response?

19 A. "I know. That was just for you."

20 Q. And what then does Mr. Barry tell nudemac?

21 A. "Don't show anyone, but you are so far away."

22 Q. And the chat continues between these two individuals?

23 A. Yes.

24 Q. And at the end of this chat -- or actually going to 7471,
25 what does nudemac tell Mr. Barry?

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1 A. "I would hate for you to get into trouble."

2 Q. And what does Mr. Barry tell him?

3 A. He responds, "I know, not going let that happen, but
4 you" --

5 Q. And --

6 A. I'm sorry.

7 Q. I'm sorry. And then he says what?

8 A. "But you can see them live when you come to visit."

9 Q. And what did you take that to mean?

10 A. That Mr. Barry had sent a picture of the children nude
11 during this conversation and that he knew that it was illegal,
12 but he did it anyway.

13 Q. I want to draw your attention to 7f, and this chat occurred
14 when?

15 A. January 5th, 2011.

16 Q. And this was between who?

17 A. Mr. Barry and berlioz53.

18 Q. And what was the general topic of this text?

19 A. Christmas and the nude New Year's Eve party.

20 Q. All right. And in this text, did they discuss the
21 circumcision of O.B.?

22 A. Yes.

23 Q. And was it discussed at the end of this chat approximately
24 how many people were at the New Year's Eve party? Directing
25 your attention to 6679 and beyond.

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1 A. Yes.

2 Q. And approximately how many people were at the party?

3 A. According to this, approximately eight.

4 Q. And were the -- are you able to tell whether or not there
5 were any other children present besides the Barry children?

6 A. No. Mr. Barry states that there were no other children
7 there.

8 Q. Okay. Now, looking at 7g, who is the subject that
9 Mr. Barry is talking to in 7g?

10 A. The berlioz53 again.

11 Q. Okay. And what is the topic of this chat?

12 A. Boys reaching puberty and talking to them about
13 masturbation.

14 Q. And where in this chat does it discuss safely masturbating?

15 A. I don't believe it really references safely masturbating.

16 Q. Where in any of the chats that you recovered does it
17 discuss safely masturbating?

18 A. I did not find any chats that references safely
19 masturbating.

20 Q. Where in this chat does it discuss anything about anybody
21 being injured or masturbating improperly?

22 A. I did not find any chats.

23 Q. And does this discuss Mr. Barry's children?

24 A. Yes, ma'am.

25 Q. And going specifically to 7 -- 1789, on the second to last

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1 page of this chat --

2 A. Yes, ma'am.

3 Q. -- what is being discussed -- or actually let me back that
4 up. I apologize. Let's go to 6753.

5 A. Yes, ma'am.

6 Q. Okay. And what's going on there?

7 A. They're discussing having Mr. Barry talking to his children
8 about masturbation.

9 Q. Okay. And do they use the term "masturbation"?

10 A. No, ma'am.

11 Q. What term do they use?

12 A. One of the more common terms they've been using is "wank."

13 Q. W-a-n-k?

14 A. Yes, ma'am.

15 Q. And is that used as a verb as well?

16 A. Yes, ma'am.

17 Q. Okay. So where does the word "masturbation" show up?

18 A. It doesn't, ma'am.

19 Q. Let's talk about what is going on in the chat around 1795.

20 A. It's Mr. Barry discussing his children getting erections.

21 Q. And in what context is he discussing this? What is --

22 A. That they're proud of them and that they show them to him.

23 Q. And what is the response from berlioz53?

24 A. He states, "Love it."

25 Q. Now, let's talk about 7h. Who is this chat between?

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1 A. Mr. Barry and berlioz53 again.

2 Q. And what is the general context of this one?

3 A. Mr. Barry is discussing O.B.'s circumcision and issues that
4 he's having with it at school.

5 Q. Okay. What did Mr. Barry tell berlioz53 at the end of this
6 chat?

7 A. He talks about not wanting the schoolteachers to check O.B.
8 or to do anything with it. That they're there to teach and
9 nothing more.

10 Q. And 7i, who is that between?

11 A. Mr. Barry and lookis99, l-o-o-k-i-s-9-9.

12 Q. And have we seen this lookis -- how did you say that again?

13 A. Lookis.

14 Q. Lookis99 before?

15 A. No, ma'am.

16 Q. Okay. Now, what is Mr. Barry telling him about in the
17 section 2137?

18 A. He's talking about his kids talking to friends of his naked
19 all the time on camera, and they're naked like us.

20 Q. 7j is between -- are you able to tell who that's between?

21 A. Excuse me, ma'am?

22 Q. Are you able to tell who that chat is in between?

23 A. No, ma'am. This is with an unknown subject.

24 Q. Okay. It's Mr. Barry and an unknown subject?

25 A. Correct.

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1 Q. And what are they talking about, generally?

2 A. A lot of it is Mr. Barry starting to discuss picking up and
3 meeting a gentleman, whoever this unknown subject is.

4 Q. And do they discuss the children?

5 A. Yes.

6 Q. And do they discuss the children getting naked,
7 specifically in line 30766?

8 A. Yes.

9 Q. And let's talk about 30768. What's going on in that part
10 of the chat?

11 A. The unknown subject here -- well, Mr. Barry had said he
12 can't wait for the three of them -- can't wait to see the three
13 of you naked together. And when the unknown subject asks why
14 is that, Mr. Barry said, "Because they haven't seen a grown man
15 that is uncut." And then goes on to say, "You may have a lot
16 of explaining to do."

17 Q. In line 30779, what is the discussion?

18 A. About having his camera charged up.

19 Q. Having whose camera charged?

20 A. Mr. Barry is saying that.

21 Q. Okay. And the person chatting with him responds how?

22 A. That he wanted to bring his, too, but he wasn't sure if it
23 was okay, to which Mr. Barry tells him he can.

24 Q. And what else?

25 A. Mr. Barry tells him, "Bring it tomorrow. Always need pic

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1 of your naked adventures."

2 Q. And let's go down, does the conversation go on about the
3 pictures?

4 A. Yes, ma'am.

5 Q. And what does it say?

6 A. The unknown subject talks about wanting to get a picture
7 with clothes on or off, he doesn't care.

8 Q. What does Mr. Barry say?

9 A. Mr. Barry says, "You can have one clothed and one naked, I
10 don't care." And the unknown subject, "As long as you're
11 cool." And Mr. Barry states, "Wouldn't have offered if I
12 didn't care."

13 Q. And 30790 --

14 A. Correct.

15 Q. -- Mr. Barry says what?

16 A. "I am pretty cool with most stuff. Just ask that if you
17 get a naked picture of the boys, you keep it private." To
18 which the unknown subject stated, "Yeah, I would never ever
19 share those."

20 Q. Let's talk about 7k. That's between who?

21 A. Mr. Barry and again an unknown subject.

22 Q. And what is this general tenor of this chat?

23 A. Going to a Lone Star Nudist Resort.

24 Q. And does it indicate they've been or that they're going to
25 go?

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1 A. That they're wanting to go.

2 Q. Okay. And you don't know who that chat is with?

3 A. No, ma'am.

4 Q. Okay. 71, when was this chat?

5 A. January 25th, 2011.

6 Q. And do you know who it is with?

7 A. No, ma'am. Unknown subject.

8 Q. Okay. And what is the first part of this chat about?

9 A. Mr. Barry is talking about a guy in Scotland that does
10 massages and that he does a grandfather, a father, and the son
11 all at the same time. The son being 11, the father is 32, and
12 the grandfather 55, and they do naked massages.

13 Q. Okay. And what is line 31412 discussing?

14 A. He's talking about the son in this, thinking that it's cool
15 to see his dad and grandfather shoot.

16 Q. What did you interpret that to mean?

17 A. Ejaculating.

18 Q. And what is Mr. Barry's response to that?

19 A. Well, Mr. Barry's continuing the conversation and says,
20 "Can't wait until he can do it, too."

21 Q. Does the subject -- the unknown subject ask Mr. Barry about
22 his child -- one of his children?

23 A. Yes.

24 Q. And what is that question?

25 A. "Does the boy get wood yet?"

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1 Q. And what do you take that to mean?

2 A. Asking if the boy gets an erection yet.

3 Q. And do they go on to discuss this father, son, grandfather
4 massage further?

5 A. Yes.

6 Q. And does this conversation get more graphic?

7 A. Yes, ma'am.

8 Q. And then does Mr. Barry discuss whether either of his boys
9 masturbate without using the term "masturbate," specifically on
10 line 31430?

11 A. Yes.

12 Q. And this conversation continues about masturbation or
13 erections?

14 A. Yes, ma'am.

15 Q. Where in this chat do they discuss safe masturbation or
16 anything like that?

17 A. I didn't see any references to safe masturbation on here.

18 Q. Does Mr. Barry indicate whether or not his children are
19 interested in masturbation yet, in line 31450?

20 A. He's asked about whether or not they're curious about their
21 penises, too, grabbing or whatever, and here he states, "No."

22 Q. And what does Mr. Barry say about whether or not he has
23 erections in front of the children?

24 A. He states -- he talks about having erections in front of
25 the children.

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1 Q. And does he claim that that's not sexual?

2 A. Yes.

3 Q. Do they discuss -- does Mr. Barry discuss touching and/or
4 hanging out naked in the home?

5 A. Yes.

6 Q. And this goes on talking about the bathroom?

7 A. Yes.

8 Q. Or tub?

9 A. Yes, ma'am.

10 Q. Okay. Now, I want to draw your attention to line 31465.
11 Who's speaking in that line?

12 A. Mr. Barry.

13 Q. What does he say?

14 A. He's asking the unknown subject, "So you got to rub some
15 young boys?" To which the unknown subject replied, "Yeah."

16 Q. And then Mr. Barry says?

17 A. "You get to rub dad's, too?" To which the unknown subject
18 replied, "Yeah."

19 Q. And then what does the unknown subject say in 31470?

20 A. He tells Mr. Barry, "Got to horseplay with them a little
21 bit, too. That was fun. Cool to hug them and be pressed up
22 against them." To which Mr. Barry replied, "Good deal. Get to
23 press against dad's, too?" And the unknown subject replied,
24 "Yeah, all four of us."

25 Q. And what is Mr. Barry's response to that?

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1 A. "Awesome."

2 Q. And then what does the unknown subject say?

3 A. He states, "That our dicks would slip through their legs,
4 but they didn't think anything of it. Just boys horseplaying."

5 Q. And Mr. Barry's response?

6 A. "Of course."

7 Q. And what does he says then?

8 A. "Boys don't think real sexual at that age." The unknown
9 subject replied, "Right."

10 Q. And is that pretty much the end of the sexual talk in that
11 chat?

12 A. Yes, ma'am.

13 Q. Now, you don't know who that chat was with; is that
14 correct?

15 A. No, ma'am.

16 Q. Okay. Now, let's talk about 7m. In 7m, is the subject
17 still erections?

18 A. Yes.

19 Q. And going to line 30396, who's speaking?

20 A. The unknown subject.

21 Q. And what does he say?

22 A. He asked Mr. Barry, "So do you play with other guys in
23 front of your sons? Do they know you are gay?"

24 Q. And what is Mr. Barry's response?

25 A. "No, they don't get to see that. Their minds aren't ready

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1 to think about sex between two people."

2 Q. And does he continue to speak?

3 A. Yes. "You not sure you could contain yourself if we both
4 got hard paying Wii?"

5 Q. And what does the other individual respond?

6 A. "Ha, ha, maybe. Also met a guy who was telling me that he
7 and his son were nudists and didn't mind showing off and
8 playing." To which Mr. Barry responded, "Some guys do that."

9 Q. Now, later on in this same chat, on line 30408, what's
10 going on?

11 A. The unknown subject asks Mr. Barry if he was going to teach
12 them about j-o, which I took as jerking off.

13 Q. And what is Mr. Barry's response?

14 A. "That I will do."

15 Q. And does he continue?

16 A. Yes. He states, "Want them to know that it is normal and
17 okay to do." To which the unknown subject replies, "That's
18 cool." And then states, "I think that's a more nurturing way
19 to approach."

20 Q. And do they go on to talk about doing that in the home?

21 A. Yes.

22 Q. And in 30419, what's the -- who's speaking?

23 A. The unknown subject.

24 Q. And what is he saying?

25 A. He asked Mr. Barry, "Have they seen you do it already?" To

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1 which Mr. Barry replied, "No. Have seen me hard and leaking
2 precum. Always leak when hard."

3 Q. Now, the chat continues along that same tenor; is that
4 correct?

5 A. Yes, ma'am.

6 Q. Then let's go further into this chat. On 30451, who's
7 speaking?

8 A. 30451?

9 Q. Yes.

10 A. That is Mr. Barry.

11 Q. And what is he saying?

12 A. He said, "Cool."

13 Q. And then?

14 A. That he doesn't turn on the -- "I don't turn on the cam
15 home naked."

16 Q. And does he then go on to say that he's just being
17 cautious?

18 A. Yes.

19 Q. And in 30459, what does he say?

20 A. But he doesn't care if people are here naked with them,
21 referring to the children.

22 Q. And does that thought continue further?

23 A. Yes.

24 Q. And what does he say?

25 A. But he would love to see you naked, referring to the

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1 unknown subject. Unknown subject replies, "Hee, hee. I would
2 like to see you, too." And then asks, "Are the kids behind you
3 or on your lap?"

4 Q. And what does Mr. Barry say?

5 A. "They are next to me on the couch, but can't see my
6 laptop."

7 Q. And what does the other person say?

8 A. He then asks Mr. Barry to turn on the cam. To which
9 Mr. Barry replies, "Hang on. I will start mine."

10 Q. Now -- and then he continues.

11 A. The unknown subject says, "It's unavailable." And
12 Mr. Barry states, "Hang on." And that particular chat ends.

13 Q. Now, these are not the only chats that you recovered,
14 correct?

15 A. No, ma'am.

16 Q. This is just a sampling of them?

17 A. Yes, ma'am.

18 Q. Okay. Now, there's been discussion about images that were
19 found on Mr. Noonan's computer and Mr. Noonan's camera,
20 correct?

21 A. Yes, ma'am.

22 Q. And some of those images you testified to were also found
23 on Mr. Barry's computer, correct?

24 A. Yes, ma'am.

25 Q. And then there were images found on Mr. Barry's camera.

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1 What other links do you have between Mr. Barry and Mr. Noonan?

2 A. I do have a chat where the user names listed are related to
3 a David and a Creger.

4 Q. Okay.

5 A. Yes.

6 Q. And who do you know Creger to be?

7 A. As William Craig Noonan or as they call him, Craig.

8 Q. Okay. There's a chat and it's represented as 7n; is that
9 correct?

10 A. Yes, ma'am.

11 Q. And what is the nature of this chat?

12 A. This is discussion between Mr. Barry and Mr. Noonan,
13 talking about jobs and the kids and seeing each other and so
14 forth.

15 Q. Now, do they discuss talking on camera?

16 A. I don't believe they directly relate to talking on camera,
17 no, ma'am.

18 Q. Well, I'm going to direct your attention to page 2, the
19 one, two --

20 A. Oh, yes, ma'am. Okay.

21 Q. Okay. So --

22 A. Yeah, he states, Come on cam -- while one of them, David,
23 Mr. Barry's asking him to finish cooking and then we can talk,
24 and Creger asks him to come on cam, talk to him while he's
25 cooking.

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1 Q. And do you have a time frame for this chat?

2 A. As a date, no, ma'am.

3 Q. Okay. As a time?

4 A. There are times listed. It's in the early evening.

5 Q. And does Mr. Noonan refer to the boys in the chat where
6 they talk about coming on camera? 13 lines down.

7 A. On page 2?

8 Q. On page 2, yes.

9 A. Well, Mr. Barry talks about, "Maybe in a bit. Almost time
10 for the boys to get ready for bed." To which Mr. Noonan
11 replies, "Oh, I miss my boys and bedtime."

12 Q. And what is Mr. Barry's response to that?

13 A. "I know you do. Soon, I really hope."

14 Q. Okay. And Mr. Noonan says?

15 A. "Me too."

16 Q. And how many o's are in "too"?

17 A. 15, 16.

18 Q. And is there any part of the chat between Mr. Noonan and
19 Mr. Barry, specifically at the bottom of the third page, that
20 indicates that their relationship is more than just friends?

21 A. Yes.

22 Q. And what is that?

23 A. It talks about wanting to get together again or waiting
24 until we are together again to have fun. Well, actually before
25 that, Mr. Barry states, "Okay. Now, I would have done it once

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1 for you had I known -- I would have been playing with it."

2 Q. And what do you believe "it" refers to?

3 A. A penis. Because he's talking about right before using the
4 potty, shake it once, and then goes on to say, "Now, if I would
5 have done it once for you, I would have been playing with it."

6 Q. And is that the majority of the sexual banter in this
7 particular chat?

8 A. Yes, ma'am.

9 MS. ZACK: Your Honor, at this time I believe the
10 Government would like to play the two DVDs.

11 THE COURT: That's fine.

12 MS. ZACK: And with permission and if there's no
13 objection, we fast-forwarded to the point -- because there's
14 some dead space, where both the child and the interviewer are
15 in the room and if we can fast-forward it through any of the
16 dead spots, we will attempt to do so, if that's okay with Your
17 Honor.

18 THE COURT: That's fine.

19 MS. ZACK: Okay.

20 (Playing DVD.)

21 THE COURT: Can you turn it up, please?

22 MS. ZACK: Give us one second, Your Honor.

23 THE COURT: It's hard to hear.

24 MS. ZACK: It's somewhat difficult -- Your Honor, what
25 we can do is I'll move on to something else and we'll get some

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1 speakers and see if we can make it louder.

2 *THE COURT:* All right. Thank you.

3 *MS. ZACK:* Because I have some other stuff that we
4 can --

5 *THE COURT:* That's fine.

6 *MS. ZACK:* -- discuss and we can come back to this.

7 *THE COURT:* That's fine. Thank you.

8 *MS. ZACK:* Okay.

9 BY MS. ZACK:

10 Q. So, Special Agent Chappell, let's talk about Item No. 16 --
11 Government's Exhibit 16, which is the child pornography images
12 from the Messenger cache on the Dell Inspiron, the black
13 computer. That was Mr. Barry's, correct?

14 A. Yes, ma'am.

15 Q. Okay. And the images were found in several places on
16 Mr. Barry's computer, correct?

17 A. Correct.

18 Q. And can you refresh us again where on Mr. Barry's computer
19 these images were found?

20 A. Some of the images were found within Mr. Barry's Messenger
21 cache. Some of those same images were also found within the
22 user created folders mentioned earlier, "Craig Houston" and
23 "Craig H," "dor," and those.

24 Q. Okay. All right. Other than the unknown child and unknown
25 adult images, the ones that were 4aa to gg --

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1 A. Correct.

2 Q. -- in what would be, I believe, 17n through t, you would
3 agree those are the same images, correct?

4 A. Yes, ma'am.

5 Q. Those were only found in the Instant Messenger cache; is
6 that correct?

7 A. The aa through gg, correct, were only found in Instant
8 Messenger cache.

9 Q. 4aa through gg?

10 A. Correct.

11 Q. And those are the same images that are in 17n through t?

12 A. Correct.

13 Q. Okay. Now, let's talk about this Instant Messenger cache
14 and the other images that were in there. You just indicated
15 that some of those images were also found in other places on
16 Mr. Barry's computer?

17 A. That is correct.

18 Q. Forensically what does that tell you?

19 A. Several things. Depending on the date and time of the
20 image and stuff, as to whether or not it existed first as an
21 image in a user created folder and then was used in the Instant
22 Messenger, meaning it was sent or possibly received.

23 Q. And is it possible that it was both sent and received?

24 A. Yes, ma'am.

25 Q. Okay. Now, based on the chats that you reviewed and the

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1 way the files were saved in structure, do you believe
2 forensically that Mr. Barry sent pictures over the Internet of
3 the boys naked?

4 A. Yes, ma'am.

5 Q. And you believe he also received images, correct?

6 A. Yes, ma'am.

7 Q. Okay. But there's no way for you to determine, as you
8 explained to the Court earlier with the unknown boy pictures,
9 the -- whether it was the originating location or the
10 recipient?

11 A. That is correct.

12 Q. You just know that they were on the computer and opened and
13 looked at at some time?

14 A. Using an Instant Messenger cache, yes, ma'am.

15 Q. Right, within the Instant Messenger forum -- or format?

16 A. Correct.

17 Q. Okay. Now, let's talk about Item 17. This is selected
18 images from the Instant Messenger cache on Mr. Barry's
19 computer, correct?

20 A. Correct.

21 Q. Okay. And let's look at 17a. And this is an image that
22 we've seen before, correct?

23 A. Correct.

24 Q. And this was contained where else in the -- besides the
25 Instant Messenger cache?

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1 A. This is one of the photos contained within one of the
2 folders or subfolders within "Craig Houston."

3 Q. Okay. Let's talk about 17b. We've seen this image before,
4 have we not?

5 A. Yes, ma'am.

6 Q. This image was also 4b from Mr. Barry's laptop?

7 A. That is correct.

8 Q. And from Government's Exhibit 6A, the EXIF data, that shows
9 this was taken with what?

10 A. Mr. Noonan's camera, Casio camera.

11 Q. And this was also present in Government's Exhibit No. 13,
12 which is Mr. Noonan's laptop?

13 A. Yes, ma'am.

14 Q. Okay. And then 24a, can you go to that exhibit, please, in
15 your notebook? Do you see 24a?

16 A. Yes, ma'am.

17 Q. Okay. And what is that?

18 A. A thumbnail of what's visually the same picture.

19 Q. Okay. And where did 24a come from?

20 A. Mr. Noonan's computer.

21 Q. Okay. And what does the fact that that's in a thumbnail
22 image on Mr. Noonan's computer tell you?

23 A. That it was not the only photo that existed on Mr. Noonan's
24 computer. It was rendered -- whether an instant messaging
25 program or through Windows somehow had to create this thumbnail

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1 for it to be rendered.

2 Q. Okay. And let's talk about 22 in reference to this same
3 image 4b. What is Government's Exhibit No. 22?

4 A. This is part of the EXIF data -- I'm sorry. This is part
5 of the file properties for what was Government's Exhibit 4b.

6 Q. And what does that tell you?

7 A. This tells me the file name, which was "David and the
8 boys37.jpeg" and that it was created on Mr. Noonan's computer
9 on June 18th, 2010, at approximately 7:26:17 a.m. and that this
10 particular file resided under the folder "David and the boys"
11 within the "owner" user account, folder "David and the boys,"
12 subfolder "dor," d-o-r.

13 Q. Okay. Now, you said it was created on Mr. Noonan's
14 computer. Do you mean Mr. Barry's?

15 A. I mean Mr. Barry's computer.

16 Q. Okay.

17 A. I stand corrected.

18 Q. All right. I just want to make sure we're clear, this data
19 comes from Mr. Barry's computer?

20 A. Mr. Barry's computer, correct.

21 Q. Okay. And this would have been -- based on what we know
22 about the dates of the visits, this would have been after the
23 second June visit?

24 A. That is correct.

25 Q. Okay. And Exhibit 17b, that's from the Instant Messenger

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1 cache?

2 A. Yes, ma'am.

3 Q. And what does that tell us?

4 A. That this picture was -- just from the picture, was either
5 sent or received, it was used within the Messenger program.

6 Q. In what -- on what date? I'm sorry. Number -- this is
7 Exhibit 23.

8 A. 23, correct.

9 Q. It tells you what about Exhibit 17b?

10 A. 17b was created on September 16th, 2010, at approximately
11 11:40 p.m.

12 Q. Created where?

13 A. In the Messenger cache.

14 Q. Okay. So that doesn't mean that was the first time it was
15 put on the computer, does it?

16 A. No, ma'am.

17 Q. Okay. And, in fact, you believe it was on the computer
18 prior to that; is that --

19 *MR. JARVIS:* Object to leading, Judge.

20 *THE COURT:* Sustained.

21 BY MS. ZACK:

22 Q. What do you know about that image being on the computer
23 prior to that date?

24 A. The fact that the image existed in June, June 18th in a
25 user created folder and then it appeared approximately three

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1 months later in the Messenger cache indicates to me that it was
2 probably sent from Mr. Barry's computer via the Messenger
3 program to some individual --

4 Q. Okay.

5 A. -- or individuals.

6 Q. But there was no way for you to forensically determine to
7 whom it was sent?

8 A. No, ma'am.

9 Q. Okay. Now, going back to 17, 17c, have we seen this image
10 before as well?

11 A. Yes, ma'am.

12 Q. Okay. And -- well, let me do it this way: Images 17a
13 through m, as in Mary, did those all happen in other places on
14 Mr. Barry's computer?

15 A. Yes, ma'am.

16 Q. Now, the fact that they're in the Instant Messenger cache
17 means what forensically?

18 A. The fact that they're in the Messenger cache and exist in
19 another location and all -- most if not all of these images
20 resided on the -- in their user created folders prior to being
21 in Messenger cache indicates that they were more likely sent
22 using the Instant Messenger cache from Mr. Barry's computer.

23 Q. Okay. So let's look then at 17c. This is -- we've seen
24 this image before, correct?

25 A. Yes, ma'am.

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1 Q. And 17d?

2 A. Yes, ma'am.

3 Q. And 17e?

4 A. Yes, ma'am.

5 Q. And f?

6 A. Yes, ma'am.

7 Q. 17g?

8 A. Yes, ma'am.

9 Q. And 17h? What about 17i?

10 A. Yes, ma'am.

11 Q. Now, 17j, why is that so small?

12 A. Depending on how the program uses it, sometimes it will
13 create varying sizes of thumbnails. A lot of it has to do with
14 the proprietary nature of the instant messaging program,
15 algorithms, coding, whatever. It's hard to determine exactly
16 why this particular image was so small, other than the program
17 created it that way.

18 Q. And does that response apply to 17k, l, and m?

19 A. Correct.

20 MS. ZACK: And can we see 17k, please, and 17l and
21 17m.

22 BY MS. ZACK:

23 Q. And all of these thumbnails, j, k, l, and m, 17, were in
24 other places and we've seen larger versions of these?

25 A. Yes, ma'am.

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1 Q. Okay.

2 MS. ZACK: All right. Your Honor, at this time we're
3 going to attempt to play --

4 THE COURT: All right. Thank you. Is there something
5 you can do to improve the quality? I assume you've played it
6 before and haven't had these issues.

7 MS. ZACK: It's always been low, Your Honor. I don't
8 know if it would be better -- yeah, we're going to try with the
9 speakers, Your Honor.

10 THE COURT: All right. Thank you.

11 MS. ZACK: Is that better, Your Honor?

12 THE COURT: Yes.

13 *(Playing DVD.)*

14 MS. ZACK: We're going to start it all the way back.

15 THE COURT: Okay.

16 *(Playing DVD.)*

17 BY MS. ZACK:

18 Q. Special Agent Chappell, have you seen that video before?

19 A. Yes, ma'am.

20 Q. And that is 28b. That's the 6-14 video, correct?

21 A. Correct.

22 Q. And have you viewed 28a, the 6-7 video?

23 A. Yes, ma'am.

24 Q. And what would you say the difference is between those
25 videos?

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1 A. The second one goes into a little more detail. The first
2 one has the same -- talks about the same thing happening, just
3 not in detail.

4 Q. And these videos were taken -- these interviews were taken
5 a week apart?

6 A. Yes, ma'am.

7 Q. And that was after Mr. Barry was arrested on these charges;
8 is that correct?

9 A. That is correct.

10 Q. Okay.

11 MS. ZACK: Your Honor, the first video is in evidence.
12 I don't think it's necessary to play it unless there's some
13 specific objection in addition to what they've already lodged.

14 THE COURT: I don't think so.

15 MS. ZACK: Okay.

16 THE COURT: It's in the record.

17 MS. ZACK: Okay. Thank you, Your Honor.

18 BY MS. ZACK:

19 Q. Special Agent Chappell, let's talk about Exhibits 24b
20 through f. What are these? And of you have them in front of
21 you, correct?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. These are images I believe taken from Mr. Noonan's
25 computer.

Chappell - Direct by Ms. Zack

1 Q. Okay. And --

2 A. Yes.

3 Q. -- when you say "from Mr. Noonan's computer," you mean
4 either from the -- either from the UT laptop or the white box
5 computer, correct?

6 A. Actually these are taken from the Dell laptop, the one with
7 the UT logo on the top.

8 Q. Okay. And that was found at the search of Mr. Noonan's
9 home?

10 A. That is correct.

11 Q. Okay. And these images also -- they all contain the Barry
12 children; is that correct?

13 A. That is correct.

14 Q. Or Mr. Barry and Mr. Noonan?

15 A. That is correct.

16 Q. And the majority of them, if not all of them, appear on
17 Mr. Barry's computer?

18 A. That is correct.

19 Q. Okay. Now, let's look at 25a. 25a comes from Exhibit 14,
20 Mr. Noonan's white box computer; is that correct?

21 A. That is correct.

22 Q. And 25b also comes from that same place?

23 A. Yes.

24 Q. And these images also appear in Mr. Barry's computer?

25 *MR. JARVIS:* Objection. Continuous leading, Judge.

Chappell - Direct by Ms. Zack

1 *THE COURT:* I'll sustain the objection.

2 *MS. ZACK:* I apologize, Your Honor.

3 BY *MS. ZACK:*

4 Q. Where else do these images appear?

5 A. On Mr. Barry's computer.

6 Q. When reviewing the computers forensically, all of them,
7 Mr. Noonan's, Mr. Barry's, in regards to these images, what
8 were your conclusions forensically?

9 A. In regards specifically to?

10 Q. To how they got on the computer and how they were
11 maintained.

12 A. Well, some of the images were -- or most of the images were
13 created with Mr. Noonan's camera and then transferred at one
14 point somehow to Mr. Barry's computer and then also transferred
15 at some point somehow to Mr. Noonan's computer. But all three
16 computers had a lot of the same images.

17 Q. And would it be possible for Mr. Barry to take the SD card
18 from Mr. Noonan's computer and put it in his computer?

19 A. Yes, ma'am.

20 Q. Could you then put that same -- could Mr. Noonan have put
21 that same SD card in his own computer?

22 A. That is correct.

23 Q. And just so I'm clear, putting an SD card in a computer
24 does not erase the SD card?

25 A. No, ma'am.

Chappell - Direct by Ms. Zack

1 Q. I mean, unless you're specifically asking it to erase?

2 A. Right, unless you do something beyond to actually delete
3 it, purposefully delete it, yes.

4 Q. Okay. So the pictures can be maintained in multiple
5 locations --

6 *THE COURT:* Can you refrain from leading, please.

7 *MS. ZACK:* I apologize.

8 BY MS. ZACK:

9 Q. Is it possible for pictures to be maintained in multiple
10 places at the same time that are the same pictures?

11 A. Yes, ma'am.

12 Q. And when you analyzed Mr. Noonan's computers, the items in
13 4aa through gg and 17n through t, did they appear anywhere on
14 Mr. Noonan's computers, the unknown child?

15 A. No, ma'am. No, ma'am.

16 *MS. ZACK:* Your Honor, we've come almost to the
17 conclusion of the Government's case in chief. The only
18 additional piece of evidence the United States has is -- would
19 be called 29, which is in reference to the third trial
20 stipulation.

21 *THE COURT:* All right.

22 *MS. ZACK:* Which is the testimony of Mr. Peterson, the
23 defendant's life partner, at a detention hearing that occurred
24 for this case, but that occurred in Dallas because Mr. Barry
25 was arrested there. I would move to admit this based on the

Chappell - Cross by Mr. Jarvis

1 trial stipulation. I don't know -- I don't think it's
2 necessary to read it out loud, but I would like to be able to
3 reference parts of it in my closing argument as being in
4 evidence. I mean, if the Court wants it --

5 *THE COURT:* I think you should read it --

6 *MS. ZACK:* Okay.

7 *THE COURT:* -- so that it's part of the transcript.

8 *MS. ZACK:* Okay. Two choices. I could have either
9 Mr. --

10 *THE COURT:* Have Mr. Stabe do answers and you do
11 questions.

12 *MS. ZACK:* Okay. Perfect. That's fine. We can do
13 that. So I have no further questions at this time for Special
14 Agent Chappell.

15 *THE COURT:* All right. Are you going to ask him
16 any -- I assume then the next appropriate thing would be to
17 have him cross-examined.

18 *MS. ZACK:* Yes. And we don't have to do this part
19 until --

20 *THE COURT:* Are you passing the witness at this time?

21 *MS. ZACK:* Yes, I am, Your Honor.

22 *THE COURT:* All right.

23 *MR. JARVIS:* Judge, can we take our afternoon break at
24 this point so I can pull this together, please?

25 *THE COURT:* All right. We'll take a ten-minute break.

Chappell - Cross by Mr. Jarvis

1 Thank you.

2 (Recess from 2:55 p.m. to 3:05 p.m.)

3 THE COURT: Ready? Go ahead and take the stand,
4 please, sir.

5 Go ahead, please.

6 MR. JARVIS: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. JARVIS:

9 Q. Agent Chappell.

10 A. Yes, sir.

11 Q. All right. You have never ever actually interviewed R.B.
12 or O.B., have you?

13 A. No, sir, I have not.

14 Q. And they are the eyewitnesses and alleged victims of these
15 crimes, correct?

16 A. That is correct.

17 Q. And they are the only independent eyewitnesses, other than
18 perhaps Mr. Noonan and Mr. Barry, correct?

19 A. No, sir.

20 Q. Who else would be an independent eyewitness?

21 A. Depending on specific events, Mr. Spitler stated --

22 Q. That's the roommate, right?

23 A. That's Mr. Noonan's roommate, correct. Jeffery Spitler, he
24 had stated he had seen them there without clothes on.

25 Q. But he didn't talk about pictures being taken, did he?

Chappell - Cross by Mr. Jarvis

1 A. Not specifically, no, sir.

2 Q. So he wouldn't be any type of witness to any of the
3 pictures or who took them or when they were taken, because he
4 didn't see any picture taking, did he?

5 A. That would be correct, no, sir.

6 Q. Okay. So for the pictures, the only four people involved
7 that you know of are O.B., R.B., Mr. Noonan, and Mr. Barry,
8 correct?

9 A. And then the white-haired gentleman that appeared in a
10 couple of the pictures, but I have no idea who this person is.

11 Q. Okay. So there's at least one independent adult male that
12 you don't know of?

13 A. Correct.

14 Q. Okay. Now, when you got the case or began working on it
15 back -- I think you said January 2011, did you review the
16 records about the boys? And when I say "the boys," I'm talking
17 about O.B. and R.B. Okay?

18 *MS. ZACK:* Objection. Vague. What records?

19 *THE COURT:* Can you be more precise, please?

20 *MR. JARVIS:* Yes, ma'am.

21 BY MR. JARVIS:

22 Q. Did you review their adoption records?

23 A. At that time, no, sir.

24 Q. At any time since then?

25 A. Yes, sir, later on.

Chappell - Cross by Mr. Jarvis

1 Q. The adoption records being the formal adoption paperwork or
2 the box of adoption records that comes with it?

3 A. No, sir. Just the approved application and the order to
4 adopt.

5 Q. So, as I recall, the application was probably about ten
6 pages maybe long and then the order is about two pages long?

7 A. That's correct.

8 Q. Is that fair?

9 A. Yes, sir.

10 Q. Okay. Did you review the original CPS removal records when
11 CPS removed the boys from their natural mother?

12 A. No, sir.

13 Q. Okay. Did you review the original termination records when
14 they had a termination hearing about terminating the boys --
15 the mother of the boys rights to the boys?

16 A. The biological mother?

17 Q. Yes.

18 A. No, sir, I did not.

19 Q. And did you review the psychological evaluation by
20 Dr. Sabine of the boys back in July of 2011?

21 A. No, sir, I have not.

22 Q. Did you review the early childhood intervention records,
23 where they were given special help in teaching --

24 MS. ZACK: Objection. Assumes facts not in evidence.

25 THE COURT: I think the adoptions records are part of

Chappell - Cross by Mr. Jarvis

1 the record.

2 *MS. ZACK:* No, no, these records that he's talking
3 about now are not the adoption records.

4 *THE COURT:* Would you be a little more precise about
5 "these records" and the ones that are -- and refer to them if
6 they are in evidence by their exhibit number.

7 *MR. JARVIS:* Yes, ma'am. These are not in evidence at
8 this point in time.

9 *THE COURT:* Are you going to offer them?

10 *MR. JARVIS:* We had offered them earlier and the Court
11 didn't admit them.

12 *THE COURT:* All right. Well --

13 *MR. JARVIS:* So that's why I'm asking if he reviewed
14 them before I --

15 *THE COURT:* He can answer the question if he reviewed
16 them.

17 *MR. JARVIS:* Yes, ma'am.

18 BY MR. JARVIS:

19 Q. Did you review the early childhood intervention records?

20 A. By who directly?

21 Q. A company called -- or they call themselves ECI. It was
22 about a box full of records of all the educational things they
23 did for the boys, especially O.B. Does that ring a bell?

24 A. I have not reviewed those, no, sir.

25 Q. Okay. Did you review any of the Wichita Falls school

Chappell - Cross by Mr. Jarvis

1 records or their ARD records for the boys?

2 A. Yes, sir.

3 Q. And did you review all of their school records, or what
4 part did you review?

5 A. I went through several of them. I didn't read it exactly
6 page per page continuously. I would read several, skip over,
7 and read some more. I perused them.

8 Q. Okay. Were these the ones that we provided to y'all, or
9 did you get them from the school?

10 A. No, sir, those were the ones that you provided.

11 Q. Okay. And did you see where the boys had done pretty well
12 in school?

13 A. Yes, sir.

14 Q. And that Mr. Barry had been a good parent to the boys
15 during that period of time?

16 MS. ZACK: Objection. Calls for facts not in
17 evidence.

18 THE COURT: I'll sustain it.

19 Can you tone it down a little bit?

20 MS. ZACK: Yes, Your Honor.

21 THE COURT: I will sustain the objection as to good
22 parent.

23 BY MR. JARVIS:

24 Q. Did you see any records from the school which indicated
25 Mr. Barry's participation in the schooling of the boys?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Were they good or bad reviews?

3 A. They were good reviews, yes, sir.

4 Q. Did you review the foster parent training and evaluation
5 records?

6 A. No, sir.

7 Q. Did you review the CPS filing and removal from Mr. Barry
8 back at the beginning of this, in February of 2011?

9 A. Not until recently in preparation for this trial.

10 Q. What records did you review?

11 A. CPS records regarding the removal and transcripts from the
12 family hearing.

13 Q. Okay. So we're both understanding what we're talking
14 about, CPS files a lot of petitions and notices. Those
15 official documents that are in the court records, is that what
16 you reviewed?

17 A. Yes, sir.

18 Q. And then there was a transcript of Mr. Barry's testimony,
19 correct?

20 A. Correct.

21 Q. And Mr. -- and that was the only transcript prepared that
22 I'm aware of. Were there others that you reviewed?

23 A. Yes, sir.

24 Q. What other transcripts of the Wichita Falls trial did you
25 review?

Chappell - Cross by Mr. Jarvis

1 A. They had other witnesses, a CPS worker, I believe a Wichita
2 Falls police officer.

3 Q. Those are the excerpts that I provided at the detention
4 hearing and then gave to y'all later?

5 A. Exactly, yes, sir.

6 Q. Okay. So that would be Detective Jones, Kim Gustafson
7 (phonetic) and I think some questions from Versal Russ
8 (phonetic), the regional CPS lawyer, and I think his name is
9 Brett Hale, the ad litem for the boys, correct?

10 A. That is correct.

11 Q. And those are one or two pages each?

12 A. That is correct.

13 Q. All right. So did you review the forensic videotape of the
14 boys back in 2011, the original ones?

15 A. Yes, sir.

16 Q. And when did you review those?

17 A. I reviewed those probably at least six to eight months
18 after the investigation started.

19 Q. Sometime in 2011 probably?

20 A. Yes, sir.

21 Q. Okay. And do you recall there wasn't an outcry of sexual
22 abuse at that time on those forensic videos?

23 A. On the videos, no, sir, there was not. There was an
24 audiotape that there was.

25 Q. Right. And to make sure we're on the same page, so the

Chappell - Cross by Mr. Jarvis

1 Judge understands, there were two audiotaped what I call quick
2 interviews at the beginning of the day, during the search
3 warrant, and then later on they had a forensic video by a
4 forensic interviewer in the afternoon, correct?

5 A. No, sir. If I'm -- unless I'm mistaken, the audiotaped
6 interviews were conducted by CPS at the school, not during the
7 search warrant.

8 Q. I didn't mean at the search warrant place, but, yes, during
9 the time that the search warrant was being conducted, they went
10 to the school and talked with the boys?

11 A. Yes, sir. Yes, sir.

12 Q. So we're on the same page. But the audiotape claim first
13 and then the videotape with the forensic expert, correct?

14 A. The forensic interviewer, yes, sir.

15 Q. All right. Did you review the CPS court documents from
16 2013 when this -- these series of videotapes were made?

17 A. The CPS documents? No, sir, I have not.

18 Q. Okay. You are aware, though, that they have filed for
19 termination again, correct?

20 A. That is correct, yes, sir.

21 Q. And that was basically based upon Mr. Barry being indicted
22 for these offenses, correct?

23 MS. ZACK: Objection. Calls for a legal conclusion
24 and assumes --

25 THE COURT: If he knows. If he knows, he can answer.

Chappell - Cross by Mr. Jarvis

1 A. Yes, ma'am. I believe it's based on this investigation and
2 trial, yes, sir.

3 BY MR. JARVIS:

4 Q. Okay. All right. And did you review the CPS file on these
5 new allegations or just the documents they filed with the
6 court?

7 A. On these new allegations?

8 Q. Yeah, the videotape we just saw, the 2013 allegations.

9 A. I have only seen the videotapes and the Wichita Falls
10 Police Department report, that's it.

11 Q. Have you talked with anybody at CPS about this?

12 A. Not at length, no, sir, only that there's a pending
13 termination trial or hearing.

14 Q. And what about the police department? Have you talked with
15 the police officers involved with the 2013 allegation?

16 A. Yes, sir, one police officer who provided me with these
17 interviews.

18 Q. And who was that?

19 A. I don't remember. I spoke to him briefly for a few
20 minutes. I don't remember his name off the top of my head. It
21 was not Detective Jones.

22 Q. So it was a different one from the first one?

23 A. Yes, it was a different detective.

24 Q. And you just basically asked him to send you a copy of the
25 videotape?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. And when did you get that videotape?

3 A. That was towards the end of March, March 25th, 28th,
4 somewhere in there.

5 Q. So about a month ago?

6 A. Yes, sir.

7 Q. Okay. Did you review the counselor Julie Porter's weekly
8 records that we provided you?

9 A. Again, I went through several of them. I didn't read it
10 page per page, but I did go through them.

11 Q. There were quite a bit of them, weren't there?

12 A. Yes, sir.

13 Q. About 17 months of once a week, correct?

14 A. Yes, sir.

15 Q. Did you call Ms. Porter and talk to her about her
16 impression of the boys and what they act like and normally do?

17 A. No, sir, I did not.

18 Q. So you haven't talked to anybody about how the boys'
19 demeanor normally is or what it was back then or how they
20 acted?

21 A. No, sir.

22 Q. So it's going to be -- it's difficult for you then to say
23 what's natural and normal for them to do if you haven't talked
24 to anybody about what they acted like when they were 5 and 6
25 years old, correct?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Okay. Now, in Ms. Porter's records, did you realize or did
3 you see the references, the two or three or four references to
4 cameras or pictures?

5 A. Not specifically, no, sir. I don't remember that.

6 Q. Weren't you looking for those?

7 A. I was basically looking to see if there was any reports as
8 to them acting out or crying out or making any outcries.

9 Basically a lot of her -- of the stuff that I read was very
10 short, one or two paragraph things, stating that they came in,
11 the kids were fine, they played for a little bit and that was
12 the end of the session.

13 Q. Did you see the comments about R.B. and O.B. not
14 remembering or knowing much about cameras or pictures?

15 MS. ZACK: Objection. He's asking him to comment on
16 items that are not in evidence.

17 THE COURT: Repeat the question.

18 BY MR. JARVIS:

19 Q. You reviewed these documents, correct?

20 A. Yes, sir.

21 Q. Okay. And did you see any comments from the boys talking
22 about taking pictures?

23 MS. ZACK: Objection. It's also hearsay, Your Honor.

24 THE COURT: The question simply is, did he review any
25 comments, not what they said, just the general topic.

Chappell - Cross by Mr. Jarvis

1 A. I don't remember seeing any, no, sir.

2 BY MR. JARVIS:

3 Q. You so you don't have any information then from any source
4 of -- originating from the boys about taking pictures, do you?

5 A. Other than the information of the pictures themselves and
6 the computer and stuff, no, sir.

7 Q. Right. Other than looking at the pictures?

8 A. Correct.

9 Q. You don't have -- because Mr. Noonan didn't say anything at
10 all, right?

11 A. No, sir.

12 Q. So you don't have any information describing the events or
13 when it happened or what they were doing before or after or
14 during picture taking at all, do you?

15 A. Just the only thing that there is that I've reviewed is a
16 statement that Mr. Barry made at the family hearing, and that
17 was the only thing that was discussed.

18 Q. Okay. You mean his testimony?

19 A. Yes.

20 Q. Okay. Let's call that the transcript from the Wichita
21 Falls case so that we're both talking about the same thing.
22 Okay?

23 A. Okay.

24 Q. Because you are aware, though, that R.B., through your
25 investigation, you believe that he can take pictures and has

Chappell - Cross by Mr. Jarvis

1 taken pictures, correct?

2 A. Yes, sir.

3 Q. All right. Would you agree that little boys are -- or
4 these boys were about 5 or 6 when these pictures were taken; is
5 that about right?

6 A. 5 to 7, yes, sir.

7 Q. Okay. Would you agree that boys that age are pretty hyper
8 or can be hyper --

9 A. They can be.

10 Q. -- bouncing off the walls?

11 A. Yes, sir, they can be.

12 Q. Okay. And they can do kind of unusual and sometimes, in
13 adult's eyes, stupid things, right?

14 A. Yes, sir.

15 Q. I mean, they're little boys, right?

16 A. Yes, sir.

17 Q. As they were described in one of the chats, they're like
18 little monkeys, right?

19 A. Yes, sir.

20 Q. They can be up -- hanging upside down and that's just
21 normal for them to be hanging upside down somewhere, isn't it?

22 A. Sometimes, yes, sir.

23 Q. Okay. And we can't use our adult views of natural and
24 normal and superimpose them on a 5, 6, or 7-year-old boy, can
25 we?

Chappell - Cross by Mr. Jarvis

1 A. Actually, yes, sir, I can. That would be parenting.

2 That's exactly what parenting would be, is putting your values
3 and what's normal and natural and instilling those into your
4 children.

5 Q. I agree with that, but you can't look at when they do
6 something and say that's unnatural for a 7-year-old based on
7 what would be natural for a 50-year-old man, can you?

8 A. No, sir, that -- I see what you're saying. No, sir.

9 Q. Right. Because they can be kind of show-offs, can't they?

10 A. Yes, sir.

11 Q. And because you didn't investigate the boys or even talk to
12 them yourself, you can't testify about whether or not any of
13 these poses or pictures or positions they were in are normal
14 and natural for these -- O.B. and R.B., can you?

15 A. Honestly, sir, I would have to say that based on my
16 training, experience, being a father, some of those pictures
17 and some of those poses are not natural for a child.

18 Q. But you don't know these boys, do you?

19 A. No, sir, I do not know these boys.

20 Q. And, in fact, when you testified at the detention hearing,
21 you said that these were just roughhousing pictures. Do you
22 remember that? Horseplay. Excuse me.

23 A. Some of them, yes, sir, some of them were horseplay-type
24 pictures, yes, sir.

25 Q. And would that be the group of pictures on the bed with the

Chappell - Cross by Mr. Jarvis

1 dog and sometimes a Superman picture or something? Would you
2 consider those to be the horseplaying -- the roughhousing
3 pictures?

4 A. No, sir. Those are a different set of pictures.

5 Q. Okay. Because I asked you, "I mean, they're just pictures
6 of boys roughhousing on a bed, correct?"

7 MS. ZACK: Objection.

8 THE COURT: What's the objection?

9 MS. ZACK: Counsel is reading from a document not in
10 evidence.

11 THE COURT: What's the document you're reading from?

12 MR. JARVIS: It's his testimony at the detention
13 hearing.

14 THE COURT: If it's impeachment, then he can
15 certainly -- why isn't that legitimate cross-examination if
16 he's giving a statement now?

17 MS. ZACK: Well, I don't think it's been
18 demonstrated --

19 THE COURT: But he can't demonstrate it unless he asks
20 the question and gets a different answer than he's given
21 before, can he? Am I missing something here?

22 MS. ZACK: No, Your Honor. We would ask that if
23 counsel is going to read something from another document, that
24 he at least reference it so we can follow along.

25 THE COURT: Well, that's appropriate.

Chappell - Cross by Mr. Jarvis

1 BY MR. JARVIS:

2 Q. Page 37 of the detention hearing. I asked you -- we were
3 talking about the photographs. You remember the detention
4 hearing, don't you?

5 A. Yes, sir.

6 Q. Okay.

7 *THE COURT:* You're on page and line what?

8 *MR. JARVIS:* 37.

9 *THE COURT:* Thank you. Line? What line?

10 BY MR. JARVIS:

11 Q. Starting at about line 3, I asked you: "Some of the
12 photographs, you can't -- you don't actually see, I guess you'd
13 say, the actual body parts touching?"

14 "But the positions would lend a person viewing
15 that picture to show that they are touching," that's your
16 answer, correct?

17 A. Yes, sir.

18 Q. And then I asked: "And there was nothing. There's no sex
19 toys. There's no posing. There's nothing like that in any of
20 those pictures. I mean, they're just pictures of boys
21 roughhousing on a bed, correct?"

22 And your answer was: "Yes, sir."

23 Do you remember that?

24 A. Yes, sir.

25 *MS. ZACK:* Objection, Your Honor. We don't know to

Chappell - Cross by Mr. Jarvis

1 what pictures these are referring. We don't have any --

2 *THE COURT:* We've seen all the pictures. There are a
3 number of them that fall into that category. So for some
4 pictures, that may well be true, and I think with that
5 understanding, I'm going allow it.

6 *MS. ZACK:* Okay. Thank you, Your Honor.

7 BY MR. JARVIS:

8 Q. Do you remember answering that?

9 A. Yes, sir.

10 Q. Okay. So back then, on June 11, 2013, the pictures of the
11 boys on the bed, that would be roughhousing, that was your
12 definition or agreement with me. Would that be a fair
13 statement?

14 A. Yes, sir, some of the pictures on the bed would -- I would
15 agree with that, yes, sir.

16 Q. Okay. And we'll go through the pictures later, and you can
17 show me which ones you don't agree with me. Okay. Fair
18 enough?

19 A. Yes, sir.

20 Q. All right. When were you first made aware that there was a
21 termination petition filed by CPS in Wichita Falls way back
22 when?

23 A. The first time or the second time?

24 Q. The first time.

25 A. The first time was after the hearing had already taken

Chappell - Cross by Mr. Jarvis

1 place.

2 Q. Well, the trial -- the jury trial was in June or July --
3 July of 2012. So that's about 17, 18 months after the search
4 warrant. So getting our dates straight.

5 A. Right.

6 Q. Is that fair?

7 A. Correct.

8 Q. So are you telling the Court that from the date the search
9 warrant was executed at Mr. Barry's house, February 7th, 2011,
10 for 18 months you had no knowledge whatsoever that CPS was
11 trying to terminate his rights to the boys?

12 A. I knew CPS was involved in the investigation. I did not
13 have details where they stood, what was going on with the
14 investigation, and did not know about the trial until after the
15 trial had already occurred.

16 Q. So you had no communication with anybody at CPS in Wichita
17 Falls until afterwards?

18 A. That is correct, sir.

19 Q. Okay. What about with the Wichita Falls Police Department
20 or the Northern District?

21 A. Only with my office, the HSI office in Dallas is who I was
22 communicating with. Did not communicate with Wichita Falls
23 Police Department or with the federal courts up there prior to
24 that.

25 Q. But you had communications somewhat with the Northern

Chappell - Cross by Mr. Jarvis

1 District HSI folks?

2 A. Yes, sir.

3 Q. Okay. And were they also investigating these pictures or
4 these events?

5 A. Yes, sir.

6 Q. And they were the lead on it at the beginning. Would that
7 be a fair statement?

8 A. Excuse me?

9 Q. Would you consider them to be the lead agency since most of
10 it occurred up there, or they were the first ones that had the
11 computers?

12 A. That is correct, yes, sir.

13 Q. Because they had the computers and analyzed them first,
14 correct?

15 A. Correct, sir.

16 Q. And who was that person who analyzed the computers?

17 A. Patrick McGaha.

18 Q. McGaha?

19 A. Yes, sir.

20 Q. Did you get a report from Agent McGaha?

21 A. No, sir.

22 Q. Did he create a report?

23 A. I believe so, yes, sir.

24 Q. Why didn't you get a report from him on these computers to
25 give to us?

Chappell - Cross by Mr. Jarvis

1 A. Because I had -- prior to that we had discussed -- the way
2 the evidence happened, Mr. Noonan's side did the whole
3 investigation and it was decided that I would take over the
4 investigation. At that point I asked them to provide me with
5 the forensic images and I reprocessed and did everything on my
6 deal and that's what I used for the investigation.

7 Q. Okay. But there's another expert Government employee
8 report forensically evaluating Mr. Barry's computer, correct?

9 A. Possibly, yes, sir, I believe so.

10 Q. And you didn't ask for it and y'all haven't turned it over
11 to us, have you?

12 A. I haven't asked for it. I didn't have a need for it. So I
13 recreated, because I was redoing the investigation.

14 *MR. JARVIS:* Well, Judge, I think at this time they're
15 required to turn over any expert reports. We've asked for any
16 expert report. The fact that he decided he didn't want to use
17 it -- he's just testified Agent McGaha made a forensic report
18 on my client's computer and they haven't turned it over.

19 *THE COURT:* Response?

20 *MS. ZACK:* He said he doesn't know if Agent McGaha
21 made a report. He's never reviewed that report. That report
22 is not the basis of any of the testimony that's being
23 presented; and I am not in possession of any reports created
24 forensically, other than Special Agent Chappell's, all of which
25 we've turned over in discovery, Your Honor.

Chappell - Cross by Mr. Jarvis

1 *THE COURT:* Did you make inquiry of Agent McGaha to
2 see if he had generated a report?

3 *MS. ZACK:* No, Your Honor, I've never had --

4 *THE COURT:* You need to do that, please, and let me
5 know.

6 *MS. ZACK:* I can do that, yes, Your Honor.

7 *THE COURT:* Go ahead, please. Thank you.

8 BY MR. JARVIS:

9 Q. All right. Let's go back to the Wichita Falls case. Okay?

10 A. Yes, sir.

11 Q. The CPS case. Approximately when did you find out about
12 the jury trial after it was over? A couple of months or when?

13 A. I believe it was fairly quickly after, a few days
14 afterwards.

15 Q. And how did you find out?

16 A. I believe I was contacted by HSI Dallas office telling me
17 the results of it.

18 Q. And who was that?

19 A. I believe it was Bradley Hudson was the investigator.

20 Q. So they were informed pretty quickly, and then they called
21 you? Is that fair to say?

22 A. Correct. Yes, sir.

23 Q. Okay. And what was decided to do about that?

24 A. The CPS?

25 Q. Yes.

Chappell - Cross by Mr. Jarvis

1 A. I don't know what they decided to do about it.

2 Q. Not CPS. You and Agent Hudson.

3 A. At that point there was nothing we could do about what
4 happened with CPS. That was not within our purview or our
5 jurisdiction.

6 Q. I understand that. I'm not making my question clear.

7 A. All right.

8 Q. For about 18 months HSI Dallas had access and did an
9 analysis of Mr. Barry's computer. Fair statement?

10 A. It wasn't quite that long. We had already shifted the
11 focus of the investigation, for me to work the investigation
12 prior to that --

13 Q. Okay.

14 A. -- well before that, I believe.

15 Q. All right. So for some period of time, whether six months,
16 eight months, ten months, Dallas had the computers. They were
17 analyzing them. Then they gave it to you. Is that fair?

18 A. Correct. Yes, sir.

19 Q. All right. And up until the CPS jury trial was concluded,
20 y'all didn't file any charges against Mr. Barry, did you?

21 A. No, sir.

22 Q. And maybe I'm wrong, but it didn't take you very long to
23 find the suspected child pornography pictures on this computer,
24 did it?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. And so you found those and we probably can assume that
2 Agent McGaha found some of those, but y'all didn't indict him
3 until after the CPS jury trial was over and the boys were
4 returned, did you?

5 A. Yes, sir.

6 Q. So why would you let a child pornographer producer run
7 around the streets for 17, 18, 19 months when you had evidence
8 he was guilty?

9 *THE COURT:* I'll allow it.

10 A. A myriad of reasons. One is making sure that the process
11 is done correctly, thoroughly, gathering as much of the
12 evidence, processing it. Processing does take time. At the
13 same time I'm also working the Noonan side of the
14 investigation. So I'm processing, being thorough with that,
15 preparing everything to present to the U.S. Attorney's Office.
16 On top of that, this is not the only case and the only
17 responsibility I had as well, working all of those as well. So
18 just making sure that it's a thorough job, done correctly, and
19 done properly just took time.

20 Q. Could it be that you didn't have to do any -- you felt like
21 you didn't have to do anything, because during the wait for the
22 CPS jury trial, the boys were in foster care with CPS and
23 Mr. Barry didn't have custody of them?

24 A. Not for me, no, sir, that was not an issue at all.

25 Q. Because after the trial, the CPS trial, he got custody

Chappell - Cross by Mr. Jarvis

1 back, correct?

2 A. Yes, sir.

3 Q. And is that when you picked the case back up, after Dallas
4 called you and started working it harder?

5 A. No, sir. I was already working the case and working it
6 hard.

7 Q. Now, the -- we talked at the detention hearing -- you
8 brought five pictures, correct?

9 A. I believe so, sir.

10 Q. I think it was five. And when we -- I questioned you,
11 you -- I say agreed, but I informed you there was at least
12 three of those that were introduced in the Wichita Falls case,
13 remember?

14 A. Vaguely, yes, sir, I remember something about that, yes,
15 sir.

16 Q. It wasn't all of them --

17 A. Right.

18 Q. -- but I think there were three of the five. When I asked
19 you that question and told you that, did you go back and look
20 at the pictures that were introduced in the Wichita Falls case
21 to confirm whether or not all those same pictures had already
22 been looked at in that trial?

23 A. No, sir. I do not know which pictures were presented to
24 Wichita Falls during that trial.

25 Q. Since I -- you ordered the transcript of Mr. Barry's

Chappell - Cross by Mr. Jarvis

1 testimony from Wichita Falls. You got that transcript, didn't
2 you?

3 A. Yes, sir.

4 Q. And inside that transcript were all of the exhibits,
5 correct?

6 A. Correct. Yes, sir.

7 Q. And so all the exhibits that he was questioned about these
8 pictures were inside that box that you got, right?

9 A. Yes, sir.

10 Q. So at that point in time you could have looked at and seen
11 what pictures had already been reviewed in the CPS trial,
12 correct?

13 A. At that time, yes, sir, once I reviewed it.

14 Q. I'm sorry. Did you do that?

15 A. Yes, sir.

16 Q. Okay. And isn't it true that inside the pictures that you
17 talked about today, all of those same pictures, with the
18 exception of some other ones that you found, like the unknown
19 ones, were introduced in that trial?

20 A. No, sir, not all. And I also reviewed that within the last
21 week or so, looking at it, because we haven't had it that long,
22 so I haven't actually sat down and done an image comparison
23 with the case and with everything else we had. It was
24 basically going through and again reading, perusing, looking at
25 the transcripts.

Chappell - Cross by Mr. Jarvis

1 Q. But just eyeballing those pictures, they sure look the
2 same, don't they?

3 A. Some of them do, yes, sir.

4 Q. Okay. All right. Now, Mr. Noonan was indicted
5 November 8th, 2012, correct?

6 A. Yes, sir.

7 Q. And he was indicted in an indictment all by himself, right?

8 A. Yes, sir.

9 Q. And then later on Mr. Barry was added to that indictment
10 back in June of 2013, approximately?

11 A. Correct. Yes, sir.

12 Q. And that's when he got arrested, correct?

13 A. Yes, sir.

14 Q. And you had had Noonan's computer and Barry's computer the
15 same amount of time, correct?

16 A. No, sir.

17 Q. No, sir?

18 A. No, sir.

19 Q. Whose had you had longer?

20 A. Noonan's.

21 Q. Okay. When did you get Barry's?

22 A. It was several months after the search warrant. So maybe
23 four, four to six months tops after the Noonan search warrant.

24 Q. Okay. So you had Noonan's five months earlier, fair?

25 A. More or less, yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. But you went ahead -- y'all went ahead and indicted Noonan
2 by himself, but didn't include Mr. Barry, correct?

3 A. At that time, yes, sir.

4 Q. And then what is that, a year later, nine months later you
5 indicted Mr. Barry -- almost ten months later, November to
6 June; is that fair?

7 A. November to June, so about -- yes, sir, eight months later.

8 Q. And that's because you were being more thorough with
9 Mr. Barry's computer than Mr. Noonan's?

10 A. No, sir.

11 Q. Why was that?

12 A. That was after processing and getting the probable cause to
13 indict Mr. Noonan and then putting the pieces together for the
14 total charges of conspiracy and putting the case together where
15 they're both involved just took a little bit of time.

16 Q. All right. I want to talk a little bit about
17 Mr. Whittington. Okay? It was the search of Mr. Whittington's
18 computer along with his interview and a proffer that he made
19 that got the search warrant for Mr. Barry's computer, correct?

20 A. Yes, sir.

21 Q. And he said that Mr. Barry and Mr. Noonan had visited him
22 sometime in the fall of 2010?

23 A. I believe that's correct, yes, sir.

24 Q. And that they all got naked and there were pictures taken,
25 basically?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. All right. And inside one of the offense reports or in the
3 search warrant, Mr. Whittington says that he was the only one
4 with a camera, so he took pictures of the boys wrestling. Do
5 you remember that?

6 A. I believe that's correct, yes, sir.

7 Q. And obviously y'all believed that enough to put it in the
8 search warrant, basically, correct?

9 A. Yes, sir.

10 Q. So you don't have any evidence that David Barry was taking
11 any pictures at Tim Whittington's house, do you?

12 A. No, sir.

13 Q. And you don't have any evidence or at least none that
14 you've brought today where you can show that Mr. Barry's
15 computer ever received any images from Mr. Whittington's, do
16 you?

17 A. Only the one image that I don't know where it's taken at.
18 I don't know if it was at Mr. Whittington's or not, of the --
19 Mr. Noonan, Mr. Barry, and the two children sitting on a couch,
20 with a blue cloth or something over the couch and a yellow wall
21 with a picture. I have no idea where that picture was taken.

22 Q. Okay. But that wasn't my question. My question was: The
23 forensic analysis of Mr. Barry's computer, you don't have
24 anything from that that says this item in Mr. Barry's computer
25 came from Mr. Whittington's computer, do you?

Chappell - Cross by Mr. Jarvis

1 A. No, sir.

2 Q. So when Mr. Whittington said and y'all put in -- somebody
3 put in the search warrant that he gave those pictures to
4 Mr. Barry after they were taken, that wasn't true, was it?

5 A. That's not necessarily true. I didn't find any forensic
6 evidence. That doesn't mean that it didn't occur. I just
7 didn't find any evidence of it.

8 Q. Okay. So your forensic analysis then is incomplete or
9 inadequate, because you can't show and confirm what
10 Mr. Whittington said?

11 A. No, sir, not true at all. If Mr. Whittington had provided
12 those images on a thumb drive or a flash drive or somehow they
13 were downloaded on Barry's computer and Mr. Barry or someone
14 deleted those files and they're overwritten, I'm not going to
15 find them.

16 Q. Well, I thought that was the reason for the TKE and the
17 special EnCase investigative tools that you use to find all of
18 these images that had been erased?

19 A. No, sir. I said overwritten. If they've been deleted and
20 not overwritten, they are potentially recoverable. If a file
21 is overwritten, they're gone, because they are replaced by a
22 new file and so they -- the record of that file is gone.

23 Q. So if Mr. Barry or whoever was at his computer and
24 intentionally overwrote those two images, then they wouldn't
25 show up at all under any circumstances using your techniques

Chappell - Cross by Mr. Jarvis

1 that you're aware of?

2 A. Not in a visual format. If I had file names or more
3 information regarding the picture, it might be possible to find
4 some record of it. But being able to see the picture, no, sir.

5 Q. How about if you had Mr. Whittington's e-mail address,
6 wouldn't you be able to compare that with all of the chats and
7 the e-mails received by Mr. Barry's computer?

8 A. Yes, sir.

9 Q. You didn't get any of those connections, did you?

10 A. No, sir, not through Mr. Whittington's e-mail address, no,
11 sir.

12 Q. Okay. So there's nothing that you found on Mr. Barry's
13 computer that supports what Mr. Whittington said, is there?

14 A. Yes, sir, there is.

15 Q. What's that?

16 A. That they met on True Nudist. Mr. Barry does go to True
17 Nudist. That information was on the computer. Mr. Whittington
18 provided Mr. Noonan's e-mail address as sunman75. That
19 information was found on Mr. Barry's computer.

20 Q. I'm sorry. I'm not making my question clear. I apologize.
21 From Mr. Barry's computer, there's nothing that you found from
22 Mr. Whittington -- and there's pieces of information that he
23 told you about going on True Nudist or their e-mails, but
24 there's nothing in Mr. Barry's computer that says it came from
25 Mr. Whittington's, is there?

Chappell - Cross by Mr. Jarvis

1 A. That I know of, no, sir.

2 Q. Okay. All right. What about chats? You don't have any
3 chats where Mr. Whittington and Mr. Barry were chatting, do
4 you, from Mr. Barry's computer?

5 MS. ZACK: Objection, Your Honor. Relevance.
6 Mr. Whittington is not named in this indictment.

7 THE COURT: But you've introduced evidence as to his
8 involvement. I think it's a legitimate question. Overruled.

9 A. Not the name Whittington, no, sir.

10 BY MR. JARVIS:

11 Q. Or his e-mail addresses?

12 A. The Texas Ford guy, no, sir.

13 Q. So there's nothing -- because we've got chats between
14 Mr. Barry and Mr. Noonan, right?

15 A. Correct.

16 Q. Tons of those, correct?

17 A. Yes, sir.

18 Q. But we don't have a chat between Mr. Barry and
19 Mr. Whittington, do we?

20 A. Not with a user name that I would know would be
21 Mr. Whittington, no, sir.

22 Q. Okay. And Mr. Whittington didn't tell the agents there at
23 his house or during the proffer agreement he used any type of
24 fake name, did he?

25 A. Not to my knowledge, no, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Because y'all ran a warrant or application for whatever it
2 is, Ford guy, Texas Ford guy and figured out who that was and
3 the IP address, you got all that information, and Whittington
4 never said, Oh, yeah, I was really Steve Jones 1415 when I was
5 talking to Mr. Barry, did he?

6 A. Not to my knowledge, no, sir.

7 Q. So, based upon all of the information y'all knew at the
8 time, y'all checked the computer, you checked the computer and
9 you checked Mr. Barry's computer and Mr. Whittington wasn't
10 telling the truth, was he?

11 A. I believe he was telling the truth, yes, sir.

12 Q. But you don't have any computer forensic evidence to back
13 that up, do you?

14 A. Directly from Mr. Whittington that I can say is
15 Mr. Whittington, no, sir, not on Mr. Barry's computer.

16 MR. JARVIS: Judge, at this time we would renew our
17 motion to suppress. You asked us at the time was there any --

18 THE COURT: Overruled. I don't see any basis for
19 changing the prior ruling.

20 MR. JARVIS: Thank you, Judge.

21 BY MR. JARVIS:

22 Q. Well, but you said that he could have sent pictures or
23 images under another name, correct?

24 A. Yes, sir.

25 Q. Now, Mr. Whittington pled guilty to what, producing child

Chappell - Cross by Mr. Jarvis

1 pornography also?

2 A. One of the charges, yes, sir.

3 Q. What were the other charges?

4 A. I believe providing a minor for sexual performance,
5 something to that effect.

6 Q. The same parenting thing?

7 A. I believe it was state charges though.

8 Q. Okay. Well, putting aside the state charges --

9 A. Okay.

10 Q. -- let's concentrate on the fed charges for right now.

11 A. Production, yes, sir.

12 Q. Just the production. He got 14 years. But did you ever
13 find any of those bad pictures, as he described them when they
14 came in, any of those bad pictures sent to Mr. Barry?

15 A. No, sir.

16 Q. Wouldn't you think if Mr. Barry was a child pornographer,
17 producer and was enjoying that, he would have asked
18 Mr. Whittington, "Gosh, send me some of your pics"?

19 A. Not necessarily, no, sir.

20 Q. Well, isn't it common among people that produce child
21 pornography and people that enjoy child pornography to trade
22 pictures?

23 A. Yes, sir.

24 Q. But Mr. Barry never got a picture from Mr. Whittington, who
25 had great stuff, for that bad stuff, right?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Okay. Now, let's talk a little bit about Mr. Spitler. Am
3 I saying that right? S-p-i-t-l-e-r?

4 A. Yes, sir.

5 Q. All right. And he is the roommate of Mr. Noonan, correct?

6 A. Correct.

7 Q. And you actually talked to him yourself, right?

8 A. Yes, sir.

9 Q. All right. Because you did the search warrant at
10 Mr. Noonan's house?

11 A. Correct. Yes, sir.

12 Q. All right. He wasn't there all the time that Mr. Barry and
13 the boys were there, was he?

14 A. No, sir.

15 Q. He is a nurse?

16 A. Correct.

17 Q. So he kind of works different 24-hour cycle hours. Fair
18 enough?

19 A. Yes, sir.

20 Q. And so he wouldn't be there when the pictures were taken,
21 correct?

22 A. Depending on when the pictures were taken, it's possible
23 that he wasn't there, yes, sir.

24 Q. But you don't have any information and he didn't say
25 anything, "Yeah, I was here one day. They were taking

Chappell - Cross by Mr. Jarvis

1 pictures"?

2 A. No, sir.

3 Q. So as far as you know, he probably wasn't there when the
4 pictures were taken. Pretty fair?

5 A. Yes, sir.

6 Q. All right. And, in fact, he knew he saw them naked
7 together, right?

8 A. Yes, sir.

9 Q. And he knew that Mr. Noonan was a registered sex offender,
10 right?

11 A. Yes, sir.

12 Q. But he never told Mr. Barry that, did he?

13 A. Not to my knowledge, I don't know, sir.

14 Q. Well, that's what he told you?

15 A. Yes, sir.

16 Q. So if he didn't tell Mr. Barry, you have no information
17 that anybody told Mr. Barry that Mr. Noonan was a registered
18 sex offender, do you?

19 A. That's correct.

20 Q. So as far as you know, Mr. Barry did not know that Craig
21 Noonan was a registered sex offender --

22 A. That is correct.

23 Q. -- isn't that true?

24 A. Yes, sir.

25 Q. So when you're looking at these pictures now and seeing a

Chappell - Cross by Mr. Jarvis

1 registered sex offender in the pictures, if Mr. Barry saw them,
2 that's not what he saw, is it?

3 A. No, sir.

4 Q. Because he didn't know, did he?

5 A. No, sir.

6 Q. Okay. But you know and you knew at that time that
7 Mr. Noonan practiced the nudist lifestyle also, right?

8 A. Yes, sir.

9 Q. And, in fact, Mr. Noonan took Mr. Barry and the boys to a
10 backyard barbecue, right?

11 A. I don't know, sir.

12 Q. Okay. Well, do you remember Mr. Peterson's testimony at
13 the detention hearing that's been stipulated to? Do you
14 remember that?

15 A. Yes, sir.

16 Q. Do you remember Mr. Peterson -- do you have the exhibit?
17 Do you remember us talking -- or me talking to Mr. Peterson
18 about one of the pictures and another couple that was also
19 nudists?

20 A. I don't remember specifically, no, sir.

21 Q. Do you remember Pam and Robert Isaacksons being discussed?

22 A. No, sir, I don't remember that.

23 MS. ZACK: Objection, Your Honor. At this point it's
24 not impeachment. This isn't testimony that Mr. Chappell gave,
25 and he's asking him to comment on other evidence.

Chappell - Cross by Mr. Jarvis

1 *THE COURT:* I'll sustain the objection.

2 BY MR. JARVIS:

3 Q. Did you ever do an investigation based upon what the
4 information that was gleaned during either the Wichita Falls
5 case or the detention hearing about this other couple that
6 Craig Noonan took Mr. Barry and the boys to?

7 A. No, sir.

8 Q. Why not?

9 A. I specifically don't remember the information and where
10 they were taken to.

11 Q. When you read Mr. Barry's testimony, he testifies under
12 oath, gives the name of the people, the Isaacksons, who
13 actually live here in Houston?

14 A. Correct, but I reviewed that material within the last few
15 weeks. This is not something that I reviewed two years ago or
16 during the course of the investigation. This is for preparing
17 for today's trial.

18 Q. I understand. But in the last two weeks, did you look up
19 Robert Isaacksons here in Houston?

20 A. Not yet, no, sir.

21 Q. Well, he's got a LinkedIn. He works for the government
22 here. Did you even try to find another heterosexual couple
23 who's a nudist that you have a picture of with Craig Noonan and
24 their son in their backyard in that pool?

25 A. I didn't know that that's who that son was. I didn't know

Chappell - Cross by Mr. Jarvis

1 that they were related.

2 Q. Were you aware that Mr. Isaacksons and his wife came all
3 the way to Wichita Falls and testified about that?

4 A. No, sir.

5 Q. When you read the transcript of Mr. Barry, didn't it strike
6 you as, gosh, there's somebody else here who knows Craig
7 Noonan, when Mr. Barry testified that we went to the
8 Isaacksons' house and took pictures in the back -- or they took
9 pictures, that picture right there is in the Isaacksons'
10 backyard?

11 A. No, sir, I don't remember that, reading that.

12 Q. Do you remember the picture though?

13 A. Of -- yes, sir.

14 Q. The one with Mr. Noonan and an unknown third boy and the
15 Barry boys, the O.B. and R.B., correct?

16 A. Correct.

17 Q. Okay. And you testified on direct that you thought that
18 was taken in Mr. Noonan's backyard?

19 A. I believe, yes, sir.

20 Q. Did you look at the fence in Mr. Noonan's backyard to see
21 if it matches the fence in that picture?

22 A. Yes, sir. And it -- at the time that I did, it did not
23 match.

24 Q. Okay. That would be Exhibit 3v and w.

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. So it did not match?

2 A. Right, the --

3 MS. ZACK: Objection, Your Honor. There is no Exhibit
4 3v.

5 MR. JARVIS: I'm sorry. 4v and w.

6 MS. ZACK: Okay.

7 THE COURT: Thank you.

8 MS. ZACK: Okay.

9 A. The fence looks similar. It's hard to say if it's exact.
10 The street sign that was posted on the fence was no longer
11 there when I went back to look.

12 BY MR. JARVIS:

13 Q. The one that says, "Keep right"?

14 A. Excuse me?

15 Q. The one that says, "Keep right"?

16 A. Right. And there was -- I found no evidence of a swimming
17 pool, so I believed it to be, but I had no direct evidence that
18 it was Mr. Noonan's backyard.

19 Q. Now, did you get a chance to review the previous statements
20 of Mr. Barry other than the --

21 A. I believe so, yes, sir.

22 Q. I'm not counting the transcript, but statements that
23 Mr. Barry has given to whatever agency, state or federal, when
24 they did a search warrant back in 2011?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. You read through that report?

2 A. Yes, sir.

3 Q. And you know that he went -- Mr. Barry went voluntarily to
4 talk to Detective Jones at the Wichita Falls Police Department
5 about a week later, correct?

6 A. Yes, sir.

7 Q. And you reviewed that videotape, haven't you?

8 A. Yes, sir.

9 Q. And he went without a lawyer?

10 A. Correct.

11 Q. And isn't his story or what he told then the same as you've
12 heard in his defense throughout this whole ordeal?

13 *MS. ZACK:* Objection. Hearsay. It's a self-serving
14 statement, Your Honor. We had this conversation when we moved
15 to exclude it.

16 *THE COURT:* I'm going to sustain the objection.

17 BY MR. JARVIS:

18 Q. Were you aware that Mr. Barry gave ICE agent, I think it's
19 Jesse Larra (phonetic) -- do you know him from Dallas?

20 A. I heard the name, yes, sir.

21 Q. Okay. After the search warrant, they took his computers,
22 he gave them his online identity, correct?

23 A. No, sir, I was not aware of that.

24 Q. Okay. Because it's in the police report. Did you not
25 remember reading that?

Chappell - Cross by Mr. Jarvis

1 A. No, sir, I don't remember reading that.

2 Q. Wouldn't that be a normal thing that the agents ask for?

3 A. No, sir, it's not. I mean, it can be, but it is not every
4 single time, no, sir.

5 Q. Have you received any information from anybody that there
6 was any child pornography or sex with children conversations or
7 phone calls or e-mails or chats after David Barry gave his
8 e-mail address to that ICE agent?

9 A. Not that I'm aware of, sir.

10 Q. So do you think they would have told you that? Surely they
11 would have called and said, "Hey, we've got a hit on this guy
12 from Mr. Barry's computer," right?

13 A. I would think so, yes, sir.

14 Q. Because that's how you get more guys, correct?

15 A. Correct.

16 Q. And so because you haven't gotten that information, we can
17 then assume that there hasn't been any further information?

18 *MS. ZACK:* Objection. Calls for speculation.

19 *THE COURT:* Sustained. You can rephrase.

20 BY MR. JARVIS:

21 Q. You haven't conducted any further investigation based upon
22 information provided from law enforcement -- from any law
23 enforcement about any other contacts with Mr. Barry's computer
24 after it was seized, have you?

25 A. None that I know of, no, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. And also there were 26 videos seized from
2 Mr. Barry's house, correct?

3 A. Yes, sir.

4 Q. And none of them contained any child pornography, did they?

5 A. I have not reviewed them. But as far as I know, no, sir.

6 Q. Surely somebody has reviewed them, right?

7 A. I couldn't tell you if they have or haven't, sir.

8 Q. Well, there's been no charges about videos, though,
9 correct?

10 A. Correct.

11 Q. All right. Let's talk a little bit about the pictures in
12 Government's Exhibit No. 3. You have that listed as all the
13 child pornography in Mr. Barry's computer, correct?

14 A. Yes, sir.

15 Q. And would that include the ones that are in the Messenger
16 cache?

17 A. Yes, sir.

18 Q. All right. Because we have the Messenger cache ones, what
19 I call the unknown ones in another section, which would be 17,
20 correct?

21 A. Yes, sir.

22 Q. Do you have a copy up there of the exhibit list?

23 A. Yes, sir.

24 Q. All right. So, every child pornography -- suspected child
25 pornography picture that you found should be on 3, correct?

Chappell - Cross by Mr. Jarvis

1 A. Should be, yes, sir.

2 Q. All right. And I got confused. You said there were two or
3 three folders that you found all the child pornography in?

4 A. There were specifically one, two, three -- one, two, three,
5 four, five, and then including the Messenger cache would make
6 six.

7 Q. All right. Let's put the Messenger cache by itself for
8 right now.

9 A. Yes, sir.

10 Q. Just for this conversation. Okay? The way I understood
11 you to testify, there is a main folder called "Craig Houston,"
12 correct?

13 A. Correct.

14 Q. And then there is another main folder called "David and the
15 boys," correct?

16 A. That is correct.

17 Q. And then within those two main folders, there are two other
18 folders, what I would call subfolders. Would that be fair?

19 A. Correct.

20 Q. All right. Now, explain to me, in the main folder, does it
21 have pictures itself in it or does the main folder just have
22 these subfolders that have pictures?

23 A. No, sir. The "Craig Houston" folder and the main folders
24 also have pictures as well as the subfolders.

25 Q. Okay. So the main folder can hold pictures and hold

Chappell - Cross by Mr. Jarvis

1 folders of other pictures?

2 A. Correct.

3 Q. Okay. And you said the "Craig Houston" main folder had a
4 hundred and fifty-six pictures, correct?

5 A. Correct.

6 Q. And only 18 were suspected child pornography, right?

7 A. Correct.

8 Q. Which one of the exhibits in 4 are in the folder labeled
9 "Craig Houston"?

10 A. The -- I would have to pull up or create a separate report,
11 taking each of the individual pictures and giving them their
12 full file paths. I don't have the full file paths for each
13 individual picture here.

14 Q. Did you not make that a part of your original report, where
15 you found the pictures, in what folder?

16 A. Well, I have them. I just have to pull up the report and
17 get it and pull up the original FTK report that lists
18 individual file paths for each individual picture.

19 Q. Okay. Well, what are the other 138 pictures about in the
20 main "Craig Houston" folder?

21 A. A lot of them are pictures of O.B. and R.B. either in
22 Galveston, NASA, at a park, outside pictures, with Mr. Noonan
23 and Mr. Barry at a pizza place, those kind of pictures.

24 Q. Were they the same pictures that we found -- y'all found on
25 Mr. Barry's computer -- I mean, camera?

Chappell - Cross by Mr. Jarvis

1 A. No, they were not the exact -- not the same pictures, no,
2 sir.

3 Q. Not at all or --

4 A. Not at all, no, sir.

5 Q. -- just not these? Okay. Because putting aside the child
6 pornography one, it says Christmas pictures of Christmas lights
7 and Christmas trees and opening Christmas presents?

8 A. Right. He had a separate folder called "Christmas" that --
9 I believe 2008, that had a myriad of Christmas pictures in
10 them, and I believe some of those were the same as off the
11 camera.

12 Q. Okay. But those aren't in the 140?

13 A. I don't believe so, no, sir.

14 Q. Okay. So those would be traditional family vacation type
15 pictures. Fair?

16 A. Yes, sir.

17 Q. And the child pornography ones that you say are child
18 pornography that are within this main "Craig Houston" file,
19 they weren't hidden, were they?

20 A. No, sir.

21 Q. They weren't password protected, were they?

22 A. No, sir.

23 Q. I mean, anybody could open up his computer and turn it on
24 and start flipping through and find all these pictures, right?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. That's kind of unusual, isn't it, not to hide child
2 pornography, knowing it's illegal?

3 A. Actually, no, sir, it's fairly common.

4 Q. Okay. And then the two subfolders, you have "Craig H" and
5 "others," correct?

6 A. Yes, sir.

7 Q. And in the "Craig H," you have 28 pics, 8 of them are child
8 pornography, correct?

9 A. Yes, sir.

10 Q. And you can't tell us which one of these are on
11 Government's Exhibit 3, can you?

12 A. Oh, they're all in Government's Exhibit 3. I couldn't tell
13 you the exact file path of which folder they were in.

14 Q. And then "others," this 31 pictures, there's no R.B. or
15 O.B, is what you testified to earlier, right?

16 A. Right, there are no pictures of R.B. and O.B., correct.

17 Q. What are the pictures of?

18 A. They are other individuals nude, other children nude in
19 various scenarios and settings.

20 Q. But you didn't feel like any of those were child
21 pornography?

22 A. No, sir, many of them I considered child pornography.

23 Q. Okay. But not R.B. and O.B.?

24 A. No, there are no pictures of R.B. and O.B. in that folder,
25 period.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. And then the "David and the boys" is another main
2 one that has "d-o-r" and "new folder"?

3 A. Correct.

4 Q. Now, "David and the boys," that was the name given by
5 somebody to that file, correct?

6 A. Correct.

7 Q. It's not a computer-generated name?

8 A. That is correct.

9 Q. Wouldn't it be more likely that Mr. Noonan would have named
10 that "David and the boys" as opposed to David naming it "David
11 and the boys"?

12 A. Possible, yes, sir.

13 Q. Okay. And then "Craig Houston," that could be fifty-fifty
14 either way, correct?

15 A. Correct.

16 Q. All right. But you testified that they came on the
17 computer -- could have come on the computer by a disk or a
18 thumb drive, correct?

19 A. Correct.

20 Q. And if someone creates a disk labeled "David and the boys,"
21 puts a bunch of pictures on it and creates that disk, they can
22 put it in another computer and the whole file comes, including
23 the name, correct?

24 A. Not the disk. If the folder put on the disk is named that,
25 then, yes. Yeah, whatever the folder is named, yes, that's

Chappell - Cross by Mr. Jarvis

1 what would be put on the computer, yes.

2 Q. Okay. You'll have to help me with my terminology. But if
3 the folder is named "David and the boys" on the disk, it gets
4 into another computer, it's going to show up as "David and the
5 boys," right?

6 A. Yes, sir.

7 Q. Okay. And you don't have -- and maybe I didn't hear you,
8 but you don't have any information about whether or not it
9 occurred that way onto Mr. Barry's computer?

10 A. That is correct.

11 Q. It could be any one of those three different ways, right?

12 A. Correct.

13 Q. So you don't know if somebody just inserted that disk in
14 there, do you?

15 A. No, sir.

16 Q. But you said that it was done in June, 1st or 2nd, and then
17 also again in -- or on December 18th, correct?

18 A. June 18th.

19 Q. June 18th. Excuse me.

20 A. Yes. And then again in December.

21 Q. So when you said June 1st and 2nd, that means it was put on
22 the computer two different days?

23 A. Correct.

24 Q. So there were really four days that somebody put these
25 pictures on Mr. Barry's computer, correct?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. And you don't know who that was?

3 A. No, sir.

4 Q. And you don't know how it was done?

5 A. No, sir.

6 Q. Sounds like, though, at the end of the day, after taking
7 pictures, somebody made sure everybody had the same pictures,
8 right?

9 A. Possible, yes, sir.

10 Q. That would be one explanation of it, correct?

11 A. Yes, sir.

12 Q. So just like when we do a family -- go on a family vacation
13 or go on an event, you want to share pictures with the other
14 family, right?

15 A. Yes, sir.

16 Q. So you make sure they have a copy of it, correct?

17 A. Correct. Yes, sir.

18 Q. And you can make a disk or you somehow e-mail it to them,
19 right?

20 A. Correct. Yes, sir.

21 Q. It's really cumbersome to IM them 25 pictures, isn't it?

22 A. Yes, sir.

23 Q. It's a lot easier to just put it on a zip drive or a disk
24 or a thumb drive and give it to them that way, right?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Now on the other disk, the "d-o-r," you said there
2 were 75 pictures and 11 of them were, in your opinion, child
3 pornography, correct?

4 A. Yes, sir.

5 Q. And in the "David and the boys" big file, there's 87
6 pictures and only 8 of them were child pornography, right?

7 A. Correct. Yes, sir.

8 Q. And in the, quote, "new folder," which is a subfolder of
9 "David and the boys," there were pictures of R.B. and O.B. but
10 no child pornography?

11 A. Correct.

12 Q. So were any of the pictures in these four subfolders and
13 the two main folders, are any of those copies or the same
14 pictures?

15 A. There might be a few in there. Those would not have been
16 included. But for the most part, they're all separate.
17 They're all separate images.

18 Q. Are there probably -- since you don't have them defined
19 that way, but would I be fair in assuming that let's call them
20 the bedroom pictures with the dogs, that section, that group --
21 okay?

22 A. Okay.

23 Q. Are you with me? Would those all be contained in one of
24 these files together?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. All right. And so would it be fair to say that the --
2 let's call them the bedroom picture files, the horseplay ones
3 we talked about earlier, they're on one, and let's say the boys
4 in the bathtub are in another folder?

5 A. Correct. Yes, sir.

6 Q. And then there's pictures of the unknown, they're in
7 another -- well, they're in the Messenger cache, right?

8 A. Correct.

9 Q. Okay. So they're not in any of these folders, right?

10 A. No, sir.

11 Q. Okay. So would it be difficult for you this evening to run
12 that program again and be able to tell us which ones are where?

13 A. Yes, sir.

14 Q. I mean, it would be difficult or it would not be?

15 A. No, it would not be difficult.

16 Q. Okay. So you have the capability to do that, right?

17 A. Yes, I already have it. It's just a matter of pulling it
18 up, yes, sir.

19 Q. Okay. Maybe you can do that for us for in the morning, if
20 you could, please.

21 A. Yes, sir.

22 *THE COURT:* He's asking you to do it.

23 *THE WITNESS:* In the morning or right now?

24 BY MR. JARVIS:

25 Q. No, you -- how long would it take you to do it?

Chappell - Cross by Mr. Jarvis

1 A. Well, I would have to --

2 THE COURT: You would have to go back to your
3 computer?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: All right. In the morning?

6 MR. JARVIS: In the morning would be great.

7 BY MR. JARVIS:

8 Q. Would you mind doing that for us, please?

9 A. Not a problem.

10 Q. All right. Thank you.

11 Now, let's look at the pictures from Government's
12 Exhibit No. 4.

13 MR. JARVIS: Would that be Mr. Will?

14 MS. ZACK: Hold on. I think the computer fell asleep,
15 Your Honor, if you could give us a second.

16 MR. JARVIS: Are you doing it? Okay. Thank you.

17 BY MR. JARVIS:

18 Q. All right. So let's start with 4a, and is that the picture
19 where you don't know where it's from?

20 A. Correct.

21 Q. All right. So that could be anyplace, correct?

22 A. Yes, sir.

23 Q. Now, what camera was this one taken with?

24 A. I don't know, sir. The properties and EXIF data were
25 removed from the picture.

Chappell - Cross by Mr. Jarvis

1 Q. I'm sorry. You have to --

2 A. Oh, I'm sorry. The EXIF data and the property files were
3 removed from the picture.

4 Q. Can you tell us whether or not that was done intentionally
5 or was it done through some computer deal?

6 A. Oh, that was done through a computer deal.

7 Q. Okay.

8 A. Yes, sir.

9 Q. So it wasn't intentional by someone trying to hide
10 something. It just happened?

11 A. It just happened, yes, sir.

12 Q. Okay. Fair enough. But can you tell us where this came --
13 I mean, how it got on Mr. Barry's computer?

14 A. No, sir.

15 Q. You can't tell us the date?

16 A. I have to go back and look, but I believe this was -- the
17 information was stripped off it. There's no properties or
18 anything else on it, so I have no way to tell when it was
19 created.

20 Q. Okay. Will you agree with me, though, that there's either
21 another person taking the picture or a timer, right?

22 A. Yes, sir.

23 Q. Okay. And you say that -- is this one of the ones that you
24 suspect of being child pornography?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Is that because the boys' penises are showing, or privates?

2 A. And the two males being nude, yes, sir.

3 Q. Well, how is the males being nude child pornography? I
4 don't believe that's one of the *Dost* factors, do you?

5 MS. ZACK: Objection. Calls for a legal conclusion.

6 THE COURT: I'll sustain the objection to the way the
7 question is framed.

8 MR. JARVIS: Okay.

9 BY MR. JARVIS:

10 Q. Explain to me how a naked male in a picture creates child
11 pornography in your opinion.

12 A. In this particular picture, the totality of the two males
13 being nude, the two children sitting on top of the males being
14 nude, therefore sitting on top of their -- the adult males'
15 genitalia and then being able to visibly see the genitalia of
16 the two children is what leads me to believe this to be a child
17 pornographic image.

18 Q. Is there a suggestive pose?

19 A. The boy in the front on the left can be looked at that way,
20 it is possible.

21 Q. I'm asking your opinion.

22 A. Yes, my opinion, that's what I'm saying, it can be looked
23 at that way, I believe so.

24 Q. I'm sorry. I didn't mean to interrupt you.

25 A. No, I'm sorry.

Chappell - Cross by Mr. Jarvis

1 Q. But it doesn't appear the focal point is the boys' penises.
2 It's more the faces, as if they're all taking kind of a
3 portrait, doesn't it?

4 A. That, I can see that, yes, sir.

5 Q. It's not an unnatural pose? People pose like that -- I
6 mean, I've got pictures like that with my kids, right?

7 A. Except they're nude.

8 Q. Well, I'm talking about the pose itself though. The pose
9 is not unnatural, is it?

10 A. Except for the boy on the front left seems a little
11 unnatural to me, yes, sir.

12 Q. Kind of leaning back, that's unnatural for a 7-year-old
13 boy?

14 A. With one leg appearing to be draped over the other leg of
15 Mr. Barry. It just seems unnatural to me.

16 Q. And is there anything in this picture that suggests any
17 type of sexual coyness or come-hither look or however you want
18 to define that?

19 A. No, sir.

20 Q. And is there anything that you know of that anybody told
21 the boy on the left to pose like that?

22 A. To my knowledge, no, sir.

23 Q. And was there anything about this picture that you're aware
24 of that would intend or is it designed to elicit some sexual
25 response in a viewer?

Chappell - Cross by Mr. Jarvis

1 A. Not to me, sir, no, sir.

2 Q. All right. All right. Let's go to 4b, and this was a
3 picture that apparently has been in -- or is in several places,
4 right?

5 A. Yes, sir.

6 Q. The way I understand it, it's in Mr. Barry's laptop
7 regular, in one of those folders, correct?

8 A. Yes, sir.

9 Q. It's also in Craig Noonan's laptop regular, correct?

10 A. Yes, sir.

11 Q. And it came from or was originated from Craig Noonan's
12 camera, correct?

13 A. Yes, sir.

14 Q. But the pictures in Craig Noonan's camera were all carved?
15 Doesn't that mean deleted?

16 A. Yes, sir.

17 Q. All right. So we know it started -- we think we started it
18 at Mr. Noonan's camera, correct?

19 A. Correct.

20 Q. All right. But you don't have a date when the picture was
21 taken, do you?

22 A. No, sir.

23 Q. Now, there's a series of photographs in some other places
24 with one of the other boys, whichever one this is, O.B. or R.B.
25 There's another one with both boys in this same bathtub, right?

Chappell - Cross by Mr. Jarvis

1 A. Correct. Yes, sir.

2 Q. With the same bubbles on their chins, like kids normally
3 do, right?

4 A. Yes, sir.

5 Q. And then there's another picture with just the other boy in
6 the bathtub, right?

7 A. Yes, sir.

8 Q. That's going to be in Mr. Noonan's laptop, correct, 037 and
9 038?

10 A. Yes, sir.

11 Q. Do you remember those pictures?

12 A. Yes, sir.

13 Q. All right. I think that's going to be contained in 24,
14 Government's Exhibit 24. Do you have that in front of you
15 still? If you will look at the second page -- well, the first
16 page of Government's Exhibit 24A, is this same picture in the
17 thumbnail?

18 A. Correct.

19 Q. All right. And isn't it true that when they're -- well,
20 strike that.

21 And then on the second page, Government's Exhibit
22 24b, the upper right and the middle left are both a part of
23 that series of pictures. Is that fair to say?

24 A. Correct. Yes.

25 Q. Because you can see the shampoo in the right-hand corner,

Chappell - Cross by Mr. Jarvis

1 right?

2 A. Yes, sir.

3 Q. And then there's another one on 24d, the bottom right and
4 the upper left. Can you tell whether or not on 24d, the kid at
5 the bottom right is the same one on the upper left?

6 A. It's hard to tell from these pictures, sir. But I
7 believe -- I don't believe they're the same child, based on the
8 haircut.

9 Q. Okay. And that's all the bathtub pictures from
10 Mr. Noonan's computer, the laptop, correct?

11 A. Yes, sir.

12 Q. So we know there was a series of pictures of the boys at
13 some point in time being in a bathtub, right?

14 A. Yes, sir.

15 Q. Did you confirm that was Mr. Noonan's bathtub?

16 A. Yes, sir.

17 Q. Okay. So we can say it was at Mr. Noonan's house --

18 A. Correct. Yes, sir.

19 Q. -- with Mr. Noonan's camera?

20 A. Yes, sir.

21 Q. But you don't know who took these pictures, do you?

22 A. No, sir.

23 Q. You have no idea?

24 A. No, sir.

25 Q. It could be on the timer, couldn't it?

Chappell - Cross by Mr. Jarvis

1 *THE COURT:* I'm sorry. Could be what?

2 BY MR. JARVIS:

3 Q. Timer, couldn't it?

4 A. It's possible, yes, sir.

5 Q. Well, you agree with me that Mr. Noonan's camera, which is
6 this one, the Casio, it comes with a timer, doesn't it?

7 A. Yes, sir.

8 Q. And it's either a -- I think it's a ten-second or a
9 three-second timer, right?

10 A. Correct.

11 Q. And then there's a two-second timer, correct?

12 A. Yes, sir.

13 Q. Okay. So we know that this camera used to take these
14 bathtub pictures could have been taken by the boys themselves,
15 right?

16 A. No, sir, I don't believe so.

17 Q. Well, it's physically possible with a timer on a camera to
18 put the camera up here and jump in the tub in ten seconds, for
19 a little 7-year-old boy, isn't it?

20 A. I guess, yes, sir, it would be possible.

21 Q. And even if both boys are in the picture, it's still
22 possible to push the timer and the other boy get in the bathtub
23 with his brother and wait the ten seconds for the picture to
24 take, correct?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. So it's entirely possible that these pictures are taken by
2 the children and therefore can't be child pornography, can
3 they?

4 A. It could be, sir. Again, I don't believe that's the case,
5 but, yes, sir.

6 Q. Well, I understand you disagree, but the evidence says that
7 it --

8 MS. ZACK: Your Honor, I'm going to object to the
9 characterization or the statement that children taking --
10 pictures taken by children can't be child pornography.

11 THE COURT: I'm disregarding that.

12 MS. ZACK: Okay.

13 THE COURT: It's simply not -- it's not anything that
14 he observed. It's a statement of law, a question -- a
15 proposition of law and it's not for this witness to opine on
16 one way or the other.

17 BY MR. JARVIS:

18 Q. So it's entirely possible that the boys -- one of the boys
19 could have taken their own pictures with this camera that took
20 the picture, correct?

21 A. Yes, sir.

22 Q. Okay. Now, going back to 4, I think we go to 4c, correct?

23 Oh, or before we leave 4b, I thought I heard you
24 testify at some point in time, and maybe I'm confusing the
25 detention hearing with what happened today, but you believe

Chappell - Cross by Mr. Jarvis

1 this is child pornography, correct?

2 A. Yes, sir.

3 Q. Because of the unnatural pose of his legs being outside of
4 the bathtub or that's one of the reasons? I'm not trying to
5 limit you, but that's one of the reasons, right?

6 A. Yes, sir.

7 Q. But haven't we already agreed that 6 and 7-year-old boys do
8 crazy things?

9 A. Yes, sir.

10 Q. Okay. And your other reason, I think you testified before,
11 is because the focus on the genitalia, correct?

12 A. Yes, sir.

13 Q. But isn't it just an equal focus on his face and his little
14 bubbly beard as it is on his genitalia?

15 A. It's still a focus, yes, sir.

16 Q. But there could be two focuses, right?

17 A. Yes, sir.

18 Q. Okay. And it's not really in a place -- a sexual
19 suggestive setting. I mean, I guess you would call a bathtub
20 somewhat sexual setting --

21 A. It can be, yes, sir.

22 Q. Normally it wouldn't be, wouldn't you agree?

23 A. Again, it can be.

24 Q. All right. And then let's go to 4c. And this is one where
25 you considered it to be child pornography, correct?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. And the boy's penis is showing, correct?

3 A. Yes, sir.

4 Q. But Mr. Noonan isn't showing his, right?

5 A. Correct.

6 Q. And there's a dog asleep, looks like, correct?

7 A. Yes, sir.

8 Q. Now, the focus of this picture could again be on the boy's
9 face, Noonan's face, or the boy's genitalia, correct?

10 A. Yes, sir.

11 Q. And the center of the photograph is the boy's face and
12 Noonan's face, right?

13 A. Well, the center of the photograph is actually the child's
14 torso, which again leads me to the first thing I see is the
15 genitalia when I look at this picture and the first time I saw
16 it when I looked at this picture.

17 Q. Well, let's talk about the angle of the picture. Okay?

18 A. Yes, sir.

19 Q. Because as I looked at this picture, it looks like somebody
20 is taking the picture at about a two-and-a-half-foot high
21 angle?

22 A. Yes, sir.

23 Q. And that would be more likely that the other boy took that
24 picture, correct?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. So there's no evidence -- so you can't bring us any
2 evidence that says Mr. Barry knew this picture was taken, can
3 you?

4 A. No, sir.

5 Q. And certainly not at the time it was taken?

6 A. At the time it was taken, no, sir.

7 Q. Okay. So you don't have any evidence that he had any
8 intent to conspire with Mr. Noonan to create at this moment in
9 time when this picture was taken a child pornographic picture,
10 which is 4c, can you?

11 A. At the time that this picture was taken, no, sir, I don't
12 have any evidence of that.

13 Q. All right. Well, let's go to 4d. Now, 4d has Mr. Noonan
14 sitting cross-legged on the bed. I don't know if it's the same
15 bed. It looks like a different bed, right?

16 A. No, sir, it's still Mr. Noonan's.

17 Q. Well, I know, but you testified there were two beds in his
18 house, like one in the den area and one that he sleeps in. Do
19 you know which bed this one was?

20 A. This would be his bedroom.

21 Q. Okay. All right. And the boy is upside down with his legs
22 open over Mr. Noonan's face, right?

23 A. Yes, sir.

24 Q. And his -- the boy's face is facing looks like kind of up,
25 but it's certainly facing out away from Mr. Noonan's privates,

Chappell - Cross by Mr. Jarvis

1 correct?

2 A. Yes, sir.

3 Q. So a sexual pose -- a more sexual pose would have had the
4 boy reversed and his head in Mr. Noonan's privates, his face in
5 Mr. Noonan's privates and the boy's privates in Mr. Noonan's
6 face, correct?

7 A. Not necessarily. The position of the child and stuff is
8 still sexual and it still puts Mr. Noonan's hand and face very
9 close to the child's genitalia.

10 Q. Okay. But a more sexually suggestive photograph would have
11 been what I suggested, correct? It would be more sexually
12 suggestive?

13 A. It could be more sexually suggestive, yes, sir, I agree
14 with that.

15 Q. And obviously Mr. Noonan is -- can with these boys of this
16 size make the decision on where to place their legs and place
17 their hands if he so desires, correct?

18 A. Yes, sir.

19 Q. And so if he really wanted a more sexual picture, he could
20 have flipped the boy around or he could have just stuck his
21 head down and put his mouth right on the little boy's penis,
22 right?

23 A. He could have, yes, sir.

24 Q. But you don't have any of those photographs, do you?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. No photographs where Mr. Noonan is playing with one of the
2 boys' penises, is there?

3 A. That you can see -- tell that's what he's doing, no, sir, I
4 do not.

5 Q. Well, that's all we've got to go on, right, is what you can
6 see, correct?

7 A. Yes, sir.

8 Q. So there could be more or better child pornography where
9 Noonan was actually doing something on camera, right?

10 A. There could be, yes, sir.

11 Q. But there isn't, is there?

12 A. No, sir.

13 Q. And he had the ability to do that, didn't he?

14 A. Yes, sir.

15 Q. You can't in the darkness of this photograph, you can't
16 even see the boy's penis, can you?

17 A. Not very well, no, sir.

18 Q. Okay. And you sure can't see Mr. Noonan's, right?

19 A. No, sir.

20 Q. And, again, the angle of this picture is from a short
21 person, probably R.B. or the other child, correct?

22 A. Possibly, yes, sir.

23 Q. Well, if you were an adult, you would have been a lot
24 higher vantage point, correct?

25 A. If he held the camera up to his face, yes, sir. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. And isn't that what normal people do?

2 A. Yes, sir.

3 Q. Okay. And then there's always the possibility of a timer,
4 right?

5 A. Possibly, yes, sir.

6 Q. Okay. All right. Now, going to 4e, now this is the one
7 that y'all have listed, I think, as the protesting picture,
8 right, on the exhibit list?

9 A. Yes, sir.

10 Q. Okay. But you don't know what that child was doing with
11 his hands up, right?

12 A. It appears to me protesting having his picture taken.

13 Q. Okay. But my question was, you don't know, do you?

14 A. No, sir.

15 Q. Because one of the other alternative theories behind it is,
16 he could be waving at his brother, right?

17 A. Could be, yes, sir.

18 Q. Okay. So the focal point on this one could be his penis
19 area or his penis, but it also could be his hand waving, right?

20 A. Depending on the person's opinion, yes, sir.

21 Q. Okay. And then the pose, that's not an unnatural boy for a
22 little boy on a couch, is it?

23 A. It's not an unnatural pose, no, sir.

24 Q. And that's the way kids sit on couches. They cross their
25 legs and watch TV all the time, right?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Okay. And then there's no suggestive coyness or anything,
3 come-hither look or anything like that on this picture, right?

4 A. Again, to me, yes, sir, there is somewhat of that. That's
5 my opinion.

6 Q. Explain that.

7 A. Again, the positioning of the body, leg curled up, resting
8 one arm, having his other arm up, somewhat of a smile. This is
9 a little more than just sitting there watching TV on a couch,
10 especially given the fact that he is nude. It's a little bit
11 more than him sitting there watching TV or watching video games
12 on a couch.

13 Q. Wouldn't it be a more suggestive pose if his right leg was
14 bent and open?

15 A. It could be, yes, sir.

16 Q. Okay. So if somebody was posing him, they sure could pose
17 him a lot better, right?

18 A. There could be better poses, I guess, yes, sir.

19 Q. And you don't have any evidence from any source whatsoever
20 that anybody posed this boy this way, do you?

21 A. No, sir.

22 Q. And you don't have any evidence from anybody whatsoever as
23 to who took this picture, do you?

24 A. No, sir.

25 Q. And you don't have any evidence from anybody whatsoever

Chappell - Cross by Mr. Jarvis

1 that Mr. Barry knew at the time this picture was being taken
2 that it was being taken, right?

3 A. No, sir.

4 Q. And you don't have any evidence from anybody whatsoever
5 that Mr. Barry intended this to be child pornography when the
6 picture was taken, do you?

7 A. No, sir.

8 Q. And, again, the angle could be low enough to where the
9 brother took the picture?

10 A. My opinion, this particular image is higher, because it's
11 at a downward angle. So it's probably more either the child
12 held the camera up above his head or an adult took this
13 picture.

14 Q. What if the child was standing on the other end of the
15 couch a little higher up taking the picture?

16 A. No, sir, at the angle of it, you can see the floor on the
17 bottom right-hand corner. At the angle of this picture, he
18 wouldn't have been able to be on the couch and take that
19 picture.

20 Q. Okay. But it could have been another piece of furniture in
21 the den, right?

22 A. Yes, sir.

23 Q. All right. Going to 4f, now this is the series -- I don't
24 know how many, would you say about eight or nine maybe of
25 Mr. Noonan and one or two of the boys in the bathroom? I'm

Chappell - Cross by Mr. Jarvis

1 going to call these shower pictures, just to separate them from
2 the boys in the bathtub. Is that fair?

3 A. Yes, sir.

4 Q. Okay. So we know which pictures we're talking about?

5 A. Yes, sir.

6 Q. And there's about six or seven of them, right?

7 A. Yes, sir.

8 Q. Okay. And so this is the first one in that series, 4f.

9 Now, the focal point of this picture is the two faces, right?

10 A. Yes, sir.

11 Q. And that looks like with Mr. Noonan bent over and the boy
12 bent over, again, the other boy taking the picture, right?

13 A. Yes, sir.

14 Q. And while it does show his penis, it doesn't show any
15 sexual contact, does it?

16 A. The sexual position and -- or the pose that they're in is a
17 sexual position in and of itself. That's my opinion, that
18 this -- the focal point of this picture is the actual position,
19 along with being able to see his genitalia and that's a -- to
20 me that is a very sexually suggestive pose.

21 Q. All right. Let me make sure I understand this. In your
22 opinion the focal point is something you can't see in this
23 picture?

24 A. It's Mr. Noonan pressed up against the child. That's very
25 evident in the photograph.

Chappell - Cross by Mr. Jarvis

1 Q. How do you know Mr. Noonan's not wearing clothes underneath
2 there in this photograph by itself?

3 A. He may or may not. It's the position itself that's
4 sexually suggestive.

5 Q. But if Mr. Noonan had clothes on, would this still be
6 considered child pornography in your opinion?

7 A. Yes, sir.

8 Q. Okay. So in this one it's not the child's genitalia or the
9 fact that they're nude. It's the fact that Mr. Noonan has a
10 hold of his hands, holding him in front and they're bent
11 over -- I'm not going to say slightly, but not all the way.
12 Fair?

13 A. It's that along with the fact that you can see the
14 genitalia and that the child is nude, yes.

15 Q. Okay. So it's both of those. But, again, you don't have
16 any information that Mr. Barry knew about this picture, right?

17 A. At the time the picture was taken, no, sir.

18 Q. And no information that he authorized it or gave Mr. Noonan
19 permission to take a picture or I guess the other child to take
20 a picture of Mr. Noonan and his other son, right?

21 A. At the time of the picture, no, sir.

22 Q. Okay. All right. Then moving to 4g, this is Mr. Noonan on
23 the bed in -- I want to say in the morning, but this is the bed
24 pictures that we've talked about. Remember? You've got to say
25 "yes."

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Okay. Thank you. And this is a cat and a dog and a man
3 laying naked and a boy showing a picture. Do you know who's in
4 the picture?

5 A. No, sir.

6 Q. Okay. It looks like whoever it is, is wearing a Superman
7 costume, right?

8 A. Yes, sir.

9 Q. Now, the boy's elbow is right on the inner thigh or the
10 thighs of Mr. Noonan, correct? Very close to his penis?

11 A. Yes, sir.

12 Q. All right. And do see his left hand? Do you see where his
13 left hand is?

14 A. Not really, no, sir.

15 Q. It's underneath the right armpit, down Mr. Noonan's right
16 leg.

17 *MR. JARVIS:* May I approach, Judge?

18 *THE COURT:* You may. You need not ask permission to
19 approach the witness.

20 *MR. JARVIS:* I forgot.

21 BY MR. JARVIS:

22 Q. Right there. It's easier to see on this deal.

23 A. Yes, sir.

24 Q. Okay. See where that is now?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Now, it would be a lot more sexually suggestive if
2 he had the opportunity to actually put his hand on the penis,
3 right?

4 A. It would be more sexually suggestive, yes, sir.

5 Q. And you don't have any evidence that anybody told him to
6 pose like that, do you?

7 A. No, sir.

8 Q. But in your opinion because the proximity of the boy's
9 elbow and hand to Mr. Noonan's penis, is that what makes this
10 one child pornography?

11 A. That's part of it, yes, sir.

12 Q. What's the other part?

13 A. They're laying in -- Mr. Noonan is laying in bed nude with
14 a child draped -- basically draped across his penis and
15 testicles and is touching that area. To me that's sexually
16 suggestive and I consider this child pornography.

17 Q. Does the fact that Mr. Noonan is a registered sex offender,
18 does that enter the equation?

19 A. No, sir.

20 Q. Well, does the fact that Mr. Noonan and the boys are
21 nudists and run around naked all the time enter into the
22 equation?

23 A. No, sir. Because I don't have information that they run
24 around all the time nude. That's only something that I've
25 heard.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. But Mr. Spitler told you that, and you didn't have
2 any reason to doubt him?

3 A. He didn't say all the time. He said "sometimes."

4 Q. My apologies.

5 A. Yes, sir.

6 Q. They run around sometimes naked at least at Mr. Noonan's
7 house?

8 A. Correct.

9 Q. And so if they're normally usually naked in Mr. Noonan's
10 house and these pictures are taken in Mr. Noonan's house, that
11 wouldn't be an unnatural pose then if they're naturally naked
12 in Mr. Noonan's house, would it?

13 A. Again, my information is that it wasn't all the time. It
14 was sometimes, by Mr. Spitler. I also have other photographs
15 and other digital evidence that shows they are in the house
16 fully clothed and doing stuff. So, no, this is not -- that's
17 why this being a nudist act is not what I consider it to be.

18 Q. And was the picture -- do you have any evidence that the
19 picture was designed to or intended to elicit some sexual
20 response in a viewer?

21 A. It can be, yes, sir.

22 Q. That wasn't my question. My question was: Do you have any
23 information saying that this picture was designed or intended
24 to be at the time it was taken, elicit a sexual response in a
25 viewer?

Chappell - Cross by Mr. Jarvis

1 A. No, sir.

2 Q. And, again, it looks like it's about the same angle, so
3 that maybe the other brother probably took that picture?

4 A. Possible, yes, sir.

5 Q. Or the timer?

6 A. Possible, yes, sir.

7 Q. But you don't have any information that Mr. Barry knew
8 anything about this picture when it was taken, do you?

9 A. At the time of the picture, no, sir.

10 Q. Or gave permission for this picture to be taken, right?

11 A. At the time that the picture was taken, no, sir.

12 Q. Well, isn't that the important part of the exercise, is
13 when the picture was taken, what the intent was at the time?

14 MS. ZACK: Objection. Calls for a legal conclusion.

15 THE COURT: Sustained.

16 BY MR. JARVIS:

17 Q. Then 4h we have Mr. Noonan sitting on his couch with one of
18 the boys, and again the angle suggests the other boy took the
19 picture. Is that fair?

20 A. Yes, sir.

21 Q. All right. And there is that boy's, let me see, left foot
22 on top of, touching perhaps Mr. Noonan's penis, correct?

23 A. Yes, sir.

24 Q. Now, I hate to ask this question, but you testified some of
25 these were partially erect penis pictures, correct?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Is this one of them?

3 A. Yes, sir.

4 Q. Well, would you tell us which picture shows Mr. Noonan's
5 fully erect penis as a comparison?

6 A. I don't have one that shows a fully erect penis. I have
7 some that where it's not erect at all.

8 Q. Okay. And is the focal point -- isn't the focal point the
9 faces or the focal point the penis?

10 A. No, sir. In this case it is the penis and the feet
11 touching the penis, yes, sir.

12 Q. But it's the adult penis is the focal point on this one,
13 not the child's penis, right?

14 A. That is correct.

15 Q. So wouldn't this be adult porn, if it's porn at all, and
16 not child porn, because the child isn't showing his penis?

17 A. No, sir. The child is interacting with the adult and the
18 adult's penis and his body is touching it; therefore, it would
19 be child porn -- child pornography. Excuse me.

20 Q. All right. And you don't have any information that
21 Mr. Barry knew about this, right, at the time the picture was
22 taken, correct?

23 A. No, sir.

24 Q. Okay. Or that he gave permission for Mr. Noonan to take or
25 somebody to take that picture, right?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Okay. And then going to 4i, this is Mr. Noonan and one of
3 the boys, looks like they're exercising on the Wii exercise
4 program, right?

5 A. Yes, sir.

6 Q. And the boy's not even looking at the camera, is he?

7 A. No, sir.

8 Q. So it's really a snapshot, an action snapshot, wouldn't you
9 agree?

10 A. Yes, sir.

11 Q. All right. And so the focal point obviously is not on the
12 boy's genitalia, is it?

13 A. No, sir.

14 Q. It's on Mr. Noonan standing there on one leg looking goofy,
15 right?

16 A. Correct.

17 Q. Now, you said this was a, in your opinion, partially erect
18 penis, correct?

19 A. Yes, sir.

20 Q. Well, it looks like an action shot, doesn't it, like
21 they're actually moving?

22 A. Well, he's not -- I don't think he's moving. I think he's
23 balancing. And if he was moving, there would be a lot more
24 blurriness on the extremities, the hands, the feet. I think
25 he's just balancing, so he's somewhat still.

Chappell - Cross by Mr. Jarvis

1 Q. So unlike the boy's left arm that's a little unfocused, it
2 looks like he's moving, but Mr. Noonan is not, correct?

3 A. Correct.

4 Q. Is that fair?

5 A. Yes, sir.

6 Q. All right. But, again, the focus is on Mr. Noonan being
7 naked and not the boy being naked, right?

8 A. Yes, sir.

9 Q. And the angle of the picture suggests that the other boy
10 took the picture, correct?

11 A. Correct. Yes, sir.

12 Q. And you don't have any information that Mr. Barry was
13 around or knew or gave permission for this picture to be taken,
14 do you?

15 A. That is correct.

16 Q. All right. 4i, same basic picture, except this time the
17 boy in the picture does know that the picture is being taken,
18 right, because he's obviously looking right at the camera,
19 correct?

20 A. This is?

21 Q. 4i or what I show is i. Is that a j?

22 A. Yes.

23 Q. It's a j. Excuse me.

24 A. J.

25 Q. So the boy knows about this one, in the picture, right?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. But, again, the focus isn't on his genitalia, is it?

3 A. The direct focus, no, sir.

4 Q. All right. And it's a picture of Mr. Noonan balancing,
5 doing a Wii exercise, correct?

6 A. Correct.

7 Q. And, again, Mr. Barry didn't -- there's no evidence that
8 Mr. Barry knew about this, gave permission, or was even aware
9 that it was being taken, correct?

10 A. At the time the picture was taken, no, sir, I do not.

11 Q. And then again the angle, it looks like the other brother
12 probably took that picture, correct?

13 A. Possibly, yes, sir.

14 Q. Or the timer, right?

15 A. Correct. Yes, sir.

16 Q. Because an adult wouldn't get down on one knee to take that
17 picture, probably?

18 A. Probably not, no, sir.

19 Q. All right. And then 4k, now I've got this one back as one
20 of the shower pictures we talked about before.

21 A. Yes, sir.

22 Q. You can't even see Mr. Noonan's face. The boy's not even
23 facing the camera, correct?

24 A. No, sir.

25 Q. So you can't even say if he was posed or knew the picture

Chappell - Cross by Mr. Jarvis

1 was being taken, can you?

2 A. That is correct, yes, sir.

3 Q. And you can't see his genitalia, can you?

4 A. No, sir.

5 Q. All you can see is Mr. Noonan's genitalia, right?

6 A. That is correct.

7 Q. There's no contact or sexual posing at all, is there?

8 A. No, sir.

9 Q. There's no sexual coyness or come-hither look, right?

10 A. No, sir.

11 Q. And you don't even know that they were even told to be in
12 this position, right?

13 A. No, sir.

14 Q. And it's not an unnatural pose, is it?

15 A. No, sir.

16 Q. And it's not -- you don't have any information that it was
17 intended or designed to elicit sexual response from the viewer
18 of this picture?

19 A. No, sir.

20 Q. So was this one that you considered to be child
21 pornography?

22 A. Yes, sir.

23 Q. Why?

24 A. Based on the positioning, focal point is again the penis
25 and testicles of Mr. Noonan, an adult male. There are children

Chappell - Cross by Mr. Jarvis

1 present within the bathtub and, again, possible that the child
2 is taking this photograph. And so for that reason I believe
3 that it should be considered child pornography.

4 Q. Okay. The next one is 41. This is on Mr. Noonan's bed.
5 You have a boy kind of far away compared to the other pictures.
6 And then you believe Mr. Noonan's bottom, correct?

7 A. Yes, sir.

8 Q. All right. And you can barely see the boy's genitalial,
9 correct?

10 A. Yes, sir.

11 Q. And, again, the angle suggests that the brother took this
12 picture, right --

13 A. Yes, sir.

14 Q. -- or a timer at worst? And you don't have any evidence
15 that Mr. Barry knew about this or gave permission at the time
16 the picture was taken, right?

17 A. Correct.

18 Q. And there's no evidence that suggests that this was
19 intended to elicit a sexual response in the viewer, correct?

20 A. Correct.

21 Q. I mean, because it looks like -- let's assume that's
22 Mr. Noonan -- he's mooning the brother with the camera, like
23 stupid kids do all the time, right?

24 A. Except Mr. Noonan's an adult.

25 Q. I understand that, but adults act like kids, too, don't

Chappell - Cross by Mr. Jarvis

1 they?

2 A. Yes, sir.

3 Q. And so the mooning shot isn't really a sexually suggestive
4 shot. It's more of a fun shot, isn't it?

5 A. Again, it depends on who's looking at the picture. I mean,
6 some people, that might be considered sexually suggestive.

7 Q. But generally speaking, it's somebody mooning somebody.
8 It's not sex, right?

9 A. Yes, sir.

10 Q. Okay. And then looking at 4n, this one has both boys and
11 Mr. Noonan, correct?

12 A. Yes, sir.

13 Q. And the big dog?

14 A. Yes, sir.

15 Q. And you can just barely see one of the boys' penises just
16 barely right next to his right elbow, right?

17 A. Correct.

18 Q. So obviously the focal point is not the boy's penis,
19 correct --

20 A. Possibly, yes, sir.

21 Q. -- because you can barely see it?

22 A. Excuse me?

23 Q. Because you can barely see it?

24 A. Yes, sir.

25 Q. And doesn't it look like this is one of the pictures with

Chappell - Cross by Mr. Jarvis

1 the timer and then it looks like to me the boy in front has
2 just jumped in to make the ten seconds?

3 A. Possibly, yes, sir.

4 Q. Because if you look real closely to Mr. Noonan's hand, his
5 hand is not really on his shoulder. It's almost on his
6 shoulder, right?

7 A. Correct.

8 Q. So it looks like the kid just barely made the timer, right?

9 A. Correct.

10 Q. And so there's nothing sexually coy about that picture, is
11 there?

12 A. Not necessarily in this picture, no, sir.

13 Q. Okay. And there's not any unnatural pose, right?

14 A. No, sir.

15 Q. I mean, the boy on top has got his mouth open, I guess
16 sticking his tongue out at the camera, right?

17 A. Correct. Yes, sir.

18 Q. That would be the focal point, is the three faces, correct?

19 A. Yes, sir.

20 Q. So there's really nothing sexual about this picture at all,
21 is there?

22 A. Other than the children being nude, no, sir.

23 Q. Okay. And would you agree that's usually not enough to
24 make it child pornography?

25 A. For this particular picture possibly, yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. And, again, there's no evidence Mr. Barry knew about
2 this, gave permission for it, or allowed Mr. Noonan to have
3 that picture taken, right?

4 A. At the time this picture was taken, no, sir, I don't have
5 evidence for that.

6 Q. Well, let's explore that a second. Mr. Barry -- Mr. Noonan
7 never said anything about having permission, right?

8 A. Mr. Noonan, no, sir.

9 Q. R.B. never said anything to you about giving permission or
10 hearing his dad give permission to have these pictures taken,
11 correct?

12 A. R.B. never directly told me, no, sir.

13 Q. O.B. never told you that dad said we could take these
14 pictures with Uncle Craig, did he?

15 A. Directly, no, sir.

16 Q. You don't have any information Mr. Barry saying, "I gave
17 Mr. Noonan permission to take these pictures," right?

18 A. Directly, no, sir.

19 Q. And you don't have any chats out of the 30,000 lines of
20 chats that say, from David to Mr. Noonan, "I'm glad you got
21 those pictures taken," or anything suggesting that he gave
22 permission at any time for Mr. Noonan to take these pictures
23 with his boys, do you?

24 A. No, sir.

25 Q. So all you have really is your opinion based upon what you

Chappell - Cross by Mr. Jarvis

1 see as opposed to the evidence that you've gleaned from the
2 computer, correct?

3 A. No, sir, I have evidence gleaned from the computer, other
4 than what you've mentioned, that suggests that Mr. Barry had
5 knowledge, knew that these pictures were taken and went and
6 made more.

7 Q. Okay. We're going to get to those pictures in a second.

8 A. All right.

9 Q. Let's look at 4n. Now, this one, do you really know who
10 that is?

11 A. It's one of the Barry children.

12 Q. How can you tell?

13 A. Skin tone, the size of the child. It's definitely
14 Mr. Noonan. And also that toy is -- has been identified as a
15 Buzz Lightyear and appears in a different picture with one of
16 the Barry children and Mr. Noonan again.

17 Q. So it's likely it's one of the Barry boys?

18 A. And it's also within the same series of photographs, the
19 same EXIF data. So, it's taken with Mr. Noonan's camera,
20 created on the same day on the computer. So, it matches the
21 rest of the images.

22 Q. But there's no sexually suggestive posing, correct?

23 A. No, sir, given the position Mr. Noonan's face, where it's
24 at in relation to the body, as close as it is to the groin
25 area, it's very -- to me it's very apparent that the child is

Chappell - Cross by Mr. Jarvis

1 nude. To me it's a very sexually suggestive picture.

2 Q. Maybe I'm missing it, but it looks like his face is right
3 about here on the side, right?

4 A. No, sir. To me the picture -- the face is more towards the
5 body as --

6 Q. When you say "more towards" --

7 A. -- and not so much towards the side.

8 Q. When you say "towards the body," you mean towards the
9 center?

10 A. Towards the center of the torso, yes, sir.

11 Q. Thank you.

12 A. More so than it is to the side, yes, sir.

13 Q. Okay. But what if he's blowing a raspberry on his stomach
14 like people do to kids, would that be sexually suggestive?

15 A. On a nude child, yes, sir, it would be.

16 Q. As opposed to pulling up their shirt and blowing on their
17 nonshirt tummy? That's going to be more sexually suggestive
18 than just the lips on the skin?

19 A. On -- in that scenario you still have clothes and stuff
20 covering the genitalia and the groin area of the child. In
21 this particular picture, we don't have that.

22 Q. Do you have any pictures -- excuse me. To be more sexually
23 suggestive, at least in your opinion, his face could have been
24 on the boy's penis, right?

25 A. That would be more sexually suggestive, yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. There wouldn't be any doubt about that, right?

2 A. Correct.

3 Q. That would be easily, that's called child porn, we're done,
4 right?

5 A. Yes, sir.

6 Q. But this picture, he has the opportunity to put his mouth
7 on the boy's penis, but he doesn't do that, does he?

8 A. In this picture, no, sir, he doesn't.

9 Q. In fact, in none of the pictures does he put his mouth on
10 the boy's penis, does he?

11 A. In any of the pictures I have, no, sir.

12 Q. And he had the opportunity, because nobody was stopping
13 him, if that's what he wanted to do, right?

14 A. Again, that's something that Mr. Noonan -- that was a
15 decision Mr. Noonan had to make.

16 Q. That wasn't my question. My question was: He had the
17 opportunity to put his mouth on the boy's penis, right?

18 MS. ZACK: Objection, Your Honor. Calls for
19 speculation.

20 THE COURT: I'll sustain the objection. You can
21 rephrase the question.

22 BY MR. JARVIS:

23 Q. Was there anything that you saw in these pictures that
24 would have prevented Mr. Noonan from putting his mouth on the
25 boy's penis?

Chappell - Cross by Mr. Jarvis

1 A. No, sir.

2 Q. Okay. So other than him deciding not to do that, there
3 wasn't anything stopping him, right?

4 MS. ZACK: Objection, Your Honor. Assumes facts not
5 in evidence.

6 THE COURT: Nothing apparent -- are you simply asking
7 from the appearance of the photograph itself?

8 MR. JARVIS: Yes, ma'am.

9 THE COURT: All right. You can answer that question.

10 A. From these photographs, no, sir.

11 BY MR. JARVIS:

12 Q. Okay. And this again was -- at least looks like an angle
13 where the child could have taken that picture, right?

14 A. Yes, sir.

15 Q. And you don't have any evidence that Mr. Barry knew about
16 this, gave permission for it, or participated in any way,
17 correct?

18 A. At the time these pictures were taken, no, sir.

19 Q. All right. Then 4o. That's the one -- I'm going to call
20 that another shower photo. Is that fair?

21 A. 4o?

22 Q. That's what mine looks like.

23 A. My 4o is --

24 Q. Hard to see?

25 A. Well, they're not in the shower. They're walking from the

Chappell - Cross by Mr. Jarvis

1 family room to the formal living room in front.

2 Q. Okay. So this is a separate picture?

3 A. Separate picture, separate room of the house, yes, sir.

4 Q. Okay. But the boy's genitalia isn't showing, just his
5 bottom, right?

6 A. Yeah, just his buttocks, yes, sir.

7 Q. And then it's Mr. Noonan with his penis showing, correct?

8 A. Correct. Yes, sir.

9 Q. And the focus of the picture -- it's kind of far away. It
10 looks like about 8 or 10 feet, fair?

11 A. Possibly, yes, sir.

12 Q. So the focus is just on Mr. Noonan. Would that be a fair
13 statement?

14 A. Well, Mr. Noonan and the backside of the child.

15 Q. Okay. And there's no touching that you can tell from the
16 picture, right?

17 A. No, sir.

18 Q. And there's no sexual coyness on the part of the child in
19 this picture, right?

20 A. No, sir.

21 Q. And he's not even looking at the camera, is he?

22 A. No, sir.

23 Q. It's not a sexually suggestive setting? You said it was a
24 hallway, right?

25 A. An entryway, yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. So that wouldn't be sexually suggestive, correct?

2 A. No, sir.

3 Q. And there's no sexual coyness or willingness to engage in
4 sexual activity, based upon what you see of the boy, correct?

5 A. No, sir.

6 Q. Okay. And there's no evidence that it was designed or
7 intended to elicit a sexual response from a viewer, correct?

8 A. No, sir.

9 Q. And it looks like from the angle, that it was taken
10 probably by the other boy, right?

11 A. Yes, sir.

12 Q. And there is no evidence from any source that Mr. Barry
13 knew about this picture when it was taken, gave permission for
14 it to be taken, or intended for it to be child pornography,
15 right?

16 A. At this particular picture, no, sir.

17 Q. Okay. Then we have 4p. This is a picture of the boys, I'm
18 assuming, asleep. Would that be fair?

19 A. Yes, sir.

20 Q. And this is their little bed they made on the side of
21 Mr. Noonan's bed, correct?

22 A. Yes, sir.

23 Q. And it looks like the one on the right is obviously covered
24 up, but the one on the left is not. But it looks like part of
25 his left leg is still under the covers, right?

Chappell - Cross by Mr. Jarvis

1 A. Lower part of his shin, yes, sir.

2 Q. Okay. His foot and his shin area?

3 A. Yes, sir.

4 Q. Now, how often or how many times do you think a little kid
5 kicks the covers off when they're sleeping?

6 A. It's common, yes, sir.

7 Q. So that by itself, unless you had some evidence that
8 somebody intentionally did that, that's a normal occurrence for
9 a little kid sleeping, right?

10 A. Yes, sir.

11 Q. Okay. So you can't just say from the picture that, hey,
12 that's a posed deal, because that could happen normally just as
13 easily, right?

14 A. But poses can also -- I mean, poses are created to elicit
15 that as well, to make it look natural. It could go both ways.

16 Q. I'm agreeing with you.

17 A. Right.

18 Q. It could go both ways.

19 A. Yes, sir.

20 Q. So it's an even call. Fair?

21 A. Yes, sir.

22 Q. All right. But you don't have any evidence from any source
23 that anybody posed this picture, do you?

24 A. Direct evidence, no, sir, I do not.

25 Q. Okay. And the -- what circumstantial evidence would you

Chappell - Cross by Mr. Jarvis

1 have that somebody posed this?

2 A. The totality of the pictures being taken and everything
3 that we'd already learned in this investigation.

4 Q. So the focal point -- I know his penis is showing, but
5 would that, in your opinion, be the focal point of this
6 picture?

7 A. Yes, sir.

8 Q. Or the fact that the boys were asleep?

9 A. No, sir. The groin, the penis, the testicles, that to me
10 is the focal point of this picture.

11 Q. So, but it's not an unnatural pose, right?

12 A. No, sir.

13 Q. And you don't have any evidence that it was intended or
14 designed to elicit a sexual response from the viewer, correct?

15 A. No, sir.

16 Q. And that could be either a timer or somebody taller,
17 regular size person?

18 A. Given the angle of it, someone would have to be holding
19 that camera, in my opinion.

20 Q. But you don't have any evidence of who that was, do you?

21 A. No, sir.

22 Q. Okay. And you don't have any evidence that Mr. Barry knew
23 about this picture when it was taken, right?

24 A. At the time of the photograph, no, sir.

25 Q. And you don't have any evidence that he gave permission or

Chappell - Cross by Mr. Jarvis

1 that he intended for this to be child pornography, right?

2 A. Of this picture, no, sir.

3 Q. When was this picture taken?

4 A. I have to pull the exact date on it off of that file list
5 again, and which folder it came from would determine which date
6 this particular picture was taken -- or created, not taken,
7 created on the computer.

8 Q. All right. That's what confused me. So you don't know
9 when any of these pictures were taken, right?

10 A. Correct.

11 Q. You only know when somebody somehow put it on a computer,
12 right?

13 A. I know which camera these were taken with.

14 Q. Fair.

15 A. And then I know when they were placed on Mr. Barry's
16 computer.

17 Q. But you don't know when they were actually taken?

18 A. No, sir.

19 Q. And that goes for all these pictures? I don't have to ask
20 that question again, right?

21 A. Correct.

22 Q. Okay.

23 *THE COURT:* Tell me when you get to a convenient
24 stopping point and we'll recess for the evening.

25 *MR. JARVIS:* We're probably there, Judge. I've got

1 plenty more.

2 *THE COURT:* All right. About how much longer will you
3 be with this witness?

4 *MR. JARVIS:* I don't know, Judge, maybe two hours.

5 *THE COURT:* All right. And --

6 *MR. JARVIS:* Just a guess.

7 *THE COURT:* -- how many -- I assume you'll have
8 redirect. So let's assume we have the bulk of the morning on
9 this witness, which sounds reasonable. Are you -- and this is
10 your only witness, right?

11 *MS. ZACK:* Yes, Your Honor, plus the transcript that
12 we're going to read.

13 *THE COURT:* And do you know yet what your case is
14 going to be?

15 *MR. JARVIS:* I do know what I think it's going to be.

16 *THE COURT:* Can you give us some idea?

17 *MR. JARVIS:* We'll be here all day tomorrow, Judge, in
18 my --

19 *THE COURT:* All right. We're going to plan on then
20 going into Wednesday, because I've got to recess tomorrow at
21 about 3:30 and I have a conference call before then. So we are
22 going to be here on Wednesday.

23 *MR. JARVIS:* Yes, ma'am.

24 *THE COURT:* All right?

25 *MR. JARVIS:* Yes, ma'am.

1 THE COURT: All right. Anything further that we need
2 to take up this evening?

3 MS. ZACK: Nothing from the United States.

4 THE COURT: Do you want findings and conclusions? Do
5 you intend to request them, or do you want a general verdict?

6 MR. JARVIS: Probably findings and conclusions because
7 of the type of case it is, all these pictures, please.

8 THE COURT: All right. I just needed to know.

9 All right. Anything further at this point?

10 MR. JARVIS: No, ma'am.

11 MS. ZACK: Nothing from the United States, Your Honor.

12 THE COURT: Thank you very much. You're excused for
13 the evening.

14 (Concluded at 5:00 p.m.)

15 * * *

16 I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled cause, to the best
18 of my ability.

19
20 /s/ Kathy L. Metzger
21 Kathy L. Metzger
Official Court Reporter

3-31-2015
Date